AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

12–12–01 Wednesday
Vol. 66 No. 239 Dec. 12, 2001
Pages 64095–64348

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 66 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register

Vol. 66, No. 239

Wednesday, December 12, 2001

Agriculture Department
See Cooperative State Research, Education, and Extension Service
See Forest Service
See Rural Utilities Service
NOTICES
Privacy Act:
Systems of records, 64209–64211

Air Force Department
NOTICES
Global Positioning Systems:
Navstar GPS Space Segment/Navigation User Interface; control document changes for L2 Civil Signal; comment request, 64219–64220
Meetings:
U.S. Nuclear Command and Control System End-to-End Review Federal Advisory Committee, 64220
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Hetero Technology Integration Solutions, Inc., 64220

Centers for Disease Control and Prevention
NOTICES
Meetings:
Immunization Practices Advisory Committee, 64267

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64267

Coast Guard
RULES
Ports and waterways safety:
Narragansett Bay et al., RI; safety and security zones, 64144–64146
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64336–64337

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64214

Committee for the Implementation of Textile Agreements
NOTICES
Textile and apparel categories:
North American Free Trade Agreement—
Nylon yarns; short supply petition; withdrawn, 64218–64219

Comptroller of the Currency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64341–64343

Cooperative State Research, Education, and Extension Service
NOTICES
Grants and cooperative agreements; availability, etc.:
National Research Initiative Competitive Grants Program, 64211

Defense Department
See Air Force Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 64219

Drug Enforcement Administration
PROPOSED RULES
Records, reports, and exports of listed chemicals:
Gamma-butyrolactone; threshold establishment
Correction, 64173–64174

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64220–64221
Meetings:
Environmental Management Site-Specific Advisory Board—
Idaho National Engineering and Environmental Laboratory, ID, 64221
Oak Ridge Reservation, TN, 64222
Paducah Gaseous Diffusion Plant, KY, 64221–64222

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Iowa, 64151–64154
Air quality implementation plans; approval and promulgation; various States:
Illinois, 64146–64148
Kansas, 64148–64151
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
Testing and monitoring provisions; amendments, 64176–64207
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Iowa, 64207–64208
Air quality implementation plans; approval and promulgation; various States:
Illinois, 64176
Kansas, 64176
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64244–64251
Pesticide, food, and feed additive petitions:
3M, 64251–64257
Interregional Research Project (No. 4), 64257–64262
Reports and guidance documents; availability, etc.:
Regional haze regulations implementation, 64262–64263

Superfund; response and remedial actions, proposed settlements, etc.:
SCD Chemical Site, MI, 64263

Executive Office of the President
See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 64263–64264

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 64112–64114
Boeing, 64099–64107
McDonnell Douglas, 64097–64099, 64107–64112, 64114–64139
Standard instrument approach procedures, 64139–64142
NOTICES
Meetings:
Aircraft Repair and Maintenance Advisory Committee, 64337

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64341–64343

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Minnesota Power et al., 64241–64242
Environmental statements; availability, etc.:
Erie Boulevard Hydropower L.P., 64242
Environmental statements; notice of intent:
Columbia Gas Transmission Corp., 64242–64244
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 64222–64223
Aquila Long Term, Inc., 64223
CMS Trunkline Gas Co., LLC, 64223–64224
CMS Trunkline LNG Co., LLC, 64224
Colorado Interstate Gas Co., 64224–64225
Columbia Gas Transmission Corp., 64225–64226
Columbia Gulf Transmission Co., 64226
Crossroads Pipeline Co., 64226
Destin Pipeline Co., L.L.C., 64226–64227
Egan Hub Partners, L.P., 64227
El Paso Natural Gas Co., 64227–64228
Equitrans, L.P., 64228
Gilroy Energy Center, LLC, 64228
Granite State Gas Transmission, 64229
Great Lakes Gas Transmission L.P., 64229
Iroquois Gas Transmission System, L.P., 64229–64230
Kinder Morgan Interstate Gas Transmission LLC, 64230
KN Wattenberg Transmission L.L.C., 64230
Midwestern Gas Transmission Co., 64231
Midwest Independent Transmission System Operator, Inc., 64230–64231
Mississippi River Transmission Corp., 64231
Mojave Pipeline Co., 64231–64232
National Fuel Gas Supply Corp., 64232–64233
Natural Gas Pipeline Co. of America, 64233–64234
Nevada Power Co., 64234–64235
Nevada Power Co. et al., 64235
Panhandle Eastern Pipe Line Co., 64235–64236
Questar Pipeline Co., 64236
Reliant Energy Gas Transmission Co., 64236–64237
Tennessee Gas Pipeline Co., 64237–64238
Texas Gas Transmission Corp., 64238–64239
TransColorado Gas Transmission Co., 64239
Transcontinental Gas Pipe Line Corp., 64239
Transwestern Pipeline Co., 64239–64240
Viking Gas Transmission Co., 64240
Williams Gas Pipelines Central, Inc., 64240
Wyoming Interstate Co., Ltd., 64240–64241

Federal Motor Carrier Safety Administration
NOTICES
Safety advisories:
Unauthorized cargo tanks used to transport hazardous materials, 64337–64339

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 64264
Meetings; Sunshine Act, 64264

Federal Trade Commission
RULES
Practice and procedure:
Technical amendments, 64142–64144
NOTICES
Meetings:
Hague Convention on Jurisdiction and Foreign Judgments; consumer aspects; public roundtable, 64264–64266

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
Sacramento, CA; downtown/Natomas/airport corridor, 64339–64341

Forest Service
NOTICES
Environmental statements; notice of intent:
Gallatin National Forest, MT, 64211–64212
Meetings:
Shasta County Resource Advisory Committee, 64212
Trinity County Resource Advisory Committee, 64212–64213

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 64219

Geological Survey
NOTICES
Grant and cooperative agreement awards:
LaFarge Corp., Inc., 64267
Riverside Technology, Inc., 64267

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
NOTICES
Scientific misconduct findings; administrative actions:
Ruggiero, Karen M., Ph.D., 64266

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64267

Indian Affairs Bureau
NOTICES
Liquor and tobacco sale or distribution ordinance:
Quapaw Tribe of Oklahoma, 64267–64272

Interior Department
See Geological Survey
See Indian Affairs Bureau
See Reclamation Bureau

International Trade Administration
NOTICES
Countervailing duties:
Pasta from—
Italy, 64214–64216
Export trade certificates of review, 64216–64217
Overseas trade missions:
2002 trade missions—
Benelux Environmental Technologies Trade Mission, The Hague, Netherlands, and Brussels, Belgium, et al., 64217

Justice Department
See Drug Enforcement Administration
See Parole Commission

Labor Department
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 64219

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Air brake systems—
Emergency brake stops, overloading of single-unit truck axles, etc., 64154–64159

National Institute of Standards and Technology
NOTICES
Inventions, Government-owned; availability for licensing, 64217–64218
Meetings:
Weights and Measures National Conference, 64218

National Science Foundation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64283–64284

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 64284

Nuclear Regulatory Commission
NOTICES
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 64284–64312

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64273–64274
Nationally recognized testing laboratories, etc.:
Fee schedule, 64274–64280

Overseas Private Investment Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 64312

Parole Commission
NOTICES
Meetings; Sunshine Act, 64273

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Bank of America Corp., 64280–64283
Key Trust Co. of Ohio et al., 64283

Personnel Management Office
PROPOSED RULES
Health benefits, Federal employees:
Health care providers; debarments and suspensions; administrative sanctions, 64160–64173

Presidential Documents
PROCLAMATIONS
Special observances:
Human Rights Day, Bill of Rights Day, and Human Rights Week (Proc. 7513), 64095–64096
ORDERS
Order of December 10, 2001, 64345–64347

Public Health Service
See Centers for Disease Control and Prevention

Railroad Retirement Board
NOTICES
Railroad Unemployment Insurance Act:
Monthly compensation base and other determinations (2002 CY), 64312–64313

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Potholes Reservoir Study Area, WA, 64272

Rural Utilities Service
NOTICES
Environmental statements; availability, etc.:
South Mississippi Electric Power Association, 64213–64214

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
Jackson National Life Insurance Co. et al., 64313–64318
Shares substitution applications—
First Allamerica Financial Life Insurance Co. et al., 64318–64324
Options Price Reporting Authority:
Consolidated Options Last Sale Reports and Quotation Information; Reporting Plan; technical corrections, 64324

Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 64324–64325
International Securities Exchange LLC, 64325–64326
National Association of Securities Dealers, Inc., 64327–64328
New York Stock Exchange, Inc., 64328–64330
Philadelphia Stock Exchange, Inc., 64330–64336

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Livonia, Avon & Lakeville Railroad Corp., 64341

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 64341–64343

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency
See Thrift Supervision Office

Veterans Affairs Department
PROPOSED RULES
Adjudication; pensions, compensation, dependency, etc.
Independent medical opinions, 64174–64175

Separate Parts In This Issue

Part II
The President, 64345–64347

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

7513 64095

Executive Orders:

12958 (See Order of December 10, 2001) 64347

Orders:

Order of December 10, 2001 64347

5 CFR

Proposed Rules:

890 64160

14 CFR

39 (22 documents) 64097, 64099, 64100, 64102, 64104, 64105, 64107, 64109, 64112, 64114, 64116, 64117, 64119, 64121, 64124, 64125, 64128, 64129, 64132, 64133, 64135, 64138

97 (2 documents) 64139, 64141

16 CFR

3 64142

4 64142

21 CFR

Proposed Rules:

1310 64173

33 CFR

165 64144

38 CFR

Proposed Rules:

3 64174

40 CFR

52 (2 documents) 64146, 64148

62 (2 documents) 64151, 64152

Proposed Rules:

52 (2 documents) 64176

60 64176

62 (2 documents) 64207, 64208

49 CFR

571 64154

Federal Register
Vol. 66, No. 239
Wednesday, December 12, 2001

Presidential Documents

Title 3—

The President

Proclamation 7513 of December 9, 2001

Human Rights Day, Bill of Rights Day, and Human Rights Week, 2001

By the President of the United States of America

A Proclamation

The terrible tragedies of September 11 served as a grievous reminder that the enemies of freedom do not respect or value individual human rights. Their brutal attacks were an attack on these very rights. When our essential rights are attacked, they must and will be defended.

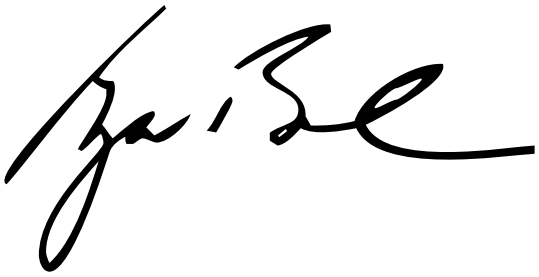
Americans stand united with those who love democracy, justice, and individual liberty. We are committed to upholding these principles, embodied in our Constitution's Bill of Rights, that have safeguarded us throughout our history and that continue to provide the foundation of our strength and prosperity.

The heinous acts of terrorism committed on September 11 were an attack against civilization itself, and they have caused the world to join together in a coalition that is now waging war on terrorism and defending international human rights. Americans have looked beyond our borders and found encouragement as the world has rallied to join the American-led coalition. Civilized people everywhere have recognized that terrorists threaten every nation that loves liberty and cherishes the protection of individual rights.

Respect for human dignity and individual freedoms reaffirms a core tenet of civilized people everywhere. This important observance honoring our Bill of Rights and advocating human rights around the world allows all Americans to celebrate the universal principles of liberty and justice that define our dreams and shape our hopes as we face the challenges of a new era.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 2001, as Human Rights Day; December 15, 2001, as Bill of Rights Day; and the week beginning December 9, 2001, as Human Rights Week. I call upon the people of the United States to honor the legacy of human rights passed down to us from previous generations and to resolve that such liberties will prevail in our Nation and throughout the world as we move into the 21st century.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of December, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–30834
Filed 12–11–01; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 66, No. 239
Wednesday, December 12, 2001

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–222–AD; Amendment 39–12551; AD 2001–24–34]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–70 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–8–70 series airplanes, that currently requires repetitive inspections and repair or replacement, if necessary, of the generator power feeder cables, supporting brackets, and clamps at all the engine pylons. This amendment requires accomplishment of a terminating action for the repetitive inspections. This amendment also requires replacement of the support clamps of the generator power feeder cable on engine nacelles/pylons 1, 2, 3, and 4 with new support clamps. This amendment is prompted by the FAA's determination that further rulemaking is necessary. The actions specified by this AD are intended to prevent a fire on the ground if a fuel leak exists in an engine pylon.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 88–11–03, amendment 39–5922 (53 FR 17018, May 13, 1988), which is applicable to all McDonnell Douglas Model DC–8–70 series airplanes, was published in the **Federal Register** on July 23, 2001 (66 FR 38220). The action proposed to continue to require repetitive inspections and repair or replacement, if necessary, of the generator power feeder cables, supporting brackets, and clamps at all the engine pylons. The action also proposed to require accomplishment of a terminating action for the repetitive inspections, and replacement of the support clamps of the generator power feeder cable on engine nacelles/pylons 1, 2, 3, and 4 with new support clamps.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 108 Model DC–8–70 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 98 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 88–11–03, and retained in this AD, takes approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $70,560, or $720 per airplane, per inspection cycle.

The new replacement specified in McDonnell Douglas DC–8–70 Service Bulletin 24–72, dated January 14, 1992, that is required in this AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $675 per airplane. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $83,790, or $855 per airplane.

The new inspection and application of sealants specified in McDonnell Douglas DC–8–70 Service Bulletin 24–71, Revision 1, dated February 25, 1991, that are required in this AD will take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection and application of sealants required by this AD on U.S. operators is estimated to be $29,400, or $300 per airplane.

The new replacement specified in McDonnell Douglas DC–8–70 Service Bulletin 24–73, dated May 30, 1990, that is required in this AD will take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $715 per airplane. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $164,150, or $1,675 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up,

planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5922 (53 FR 17018, May 13, 1988), and by adding a new airworthiness directive (AD), amendment 39–12551, to read as follows:

2001–24–34 McDonnell Douglas: Amendment 39–12551. Docket 2001–NM–222–AD. Supersedes AD 88–11–03, Amendment 39–5922.

Applicability: All Model DC–8–70 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 (g) 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 a fire on the ground if a fuel leak exists in an engine pylon, accomplish the following:

Restatement of Requirements of AD 88–11–03

Repetitive Inspections, Verification, and Corrective Actions, if Necessary

(a) Within 30 days after June 3, 1988 (the effective date of AD 88–11–03, amendment 39–5922), unless previously accomplished within the last 3,500 flight hours, inspect the generator power feeder cables, support brackets, and clamps between bulkhead feed-through at station YN=278.500 and terminal strip S3–7000 at engine pylons 1, 2, 3, and 4, for evidence of arcing, burning, chafing, damage, or cable droop, in accordance with the Accomplishment Instructions of McDonnell Douglas DC–8–70 Alert Service Bulletin A24–72, dated April 6, 1988.

(1) If no evidence of arcing, burning, chafing, damage, or drooping exists, proceed to paragraph (a)(3) of this AD.

(2) If any evidence of arcing, burning, chafing, damage, or drooping exists, prior to further flight, repair or replace parts, as required, in accordance with the service bulletin.

(3) Verify that the nuts securing cable terminals to terminal strip S3–7000 are tightened to a torque of 120 to 130 inch-pounds.

Repetitive Inspection Interval

(b) Repeat the procedures specified in paragraph (a) of this AD at intervals not to exceed 3,500 flight hours.

New Actions Required by This AD

Terminating Actions for Repetitive Inspections and Verification

(c) Within 1 year after the effective date of this AD, replace the support clamps of the generator power feeder cable on engine pylons 1, 2, 3, and 4 with new support clamps, in accordance with McDonnell Douglas DC–8–70 Service Bulletin 24–72, dated January 14, 1992. The requirements of paragraphs (a)(1) and (a)(2) of this AD must be done prior to or in conjunction with the requirements of this paragraph.

(d) Within 1 year after the effective date of this AD, do the actions specified in paragraphs (d)(1) and (d)(2) of this AD in accordance with McDonnell Douglas DC–8–70 Service Bulletin 24–71, Revision 1, dated February 25, 1991. The requirements of paragraph (a)(3) of this AD must be done prior to or in conjunction with the requirements of this paragraph.

(1) Do a general visual inspection of the terminal strip of the terminal connections of the generator power feeder cable for general condition (i.e., loose connections) and to verify that the ground studs are tight and that the nuts securing the cable terminals to the terminal strip are tightened to a torque of 120 to 130 inch-pound, in accordance with the service bulletin. If any terminal connection is loose, not tight, or torqued improperly, prior to further flight, tighten terminal connection in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Apply a coat of certain sealants per Figure 1 of the service bulletin.

(e) Accomplishment of the actions required by paragraphs (c) and (d) of this AD constitute terminating action for the requirements of paragraphs (a) and (b) of this AD.

Replacement of Certain Support Clamps

(f) Within 1 year after the effective date of this AD, replace the support clamps of the generator power feeder cable in the forward pylon on engine nacelles 1, 2, 3, and 4 with new support clamps, in accordance with McDonnell Douglas DC–8–70 Service Bulletin 24–73, dated May 30, 1990.

Alternative Methods of Compliance

(g) 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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

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

Special Flight Permits

(h) 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

(i) The actions shall be done in accordance with of McDonnell Douglas DC–8–70 Alert Service Bulletin A24–72, dated April 6, 1988; McDonnell Douglas DC–8–70 Service Bulletin 24–72, dated January 14, 1992; McDonnell Douglas DC–8–70 Service Bulletin 24–71, Revision 1, dated February 25, 1991; and McDonnell Douglas DC–8–70 Service Bulletin 24–73, dated May 30, 1990; as applicable. 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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30210 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–221–AD; Amendment 39–12550; AD 2001–24–33]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, and –200C series airplanes, that requires a one-time inspection for damage (i.e., chafing) of the power feeder wire bundle for the auxiliary power unit (APU) generator and the first officer's elevator down control cable and for proper separation between that wire bundle and control cable, and corrective action, if necessary. For certain airplanes, this amendment also requires attaching the power feeder wire bundle to adjacent wire bundles. This action is necessary to prevent a short circuit and resultant arcing between the wire bundle and control cable, which could sever the control cable. Failure of the first officer's elevator down control cable, if combined with a subsequent failure of the captain's elevator down control cable, could result in loss of elevator control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, and –200C series airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38217). That action proposed to require a one-time inspection for damage (i.e., chafing) of the power feeder wire bundle for the auxiliary power unit (APU) generator and the first officer's elevator down control cable and for proper separation between that wire bundle and control cable, and corrective action, if necessary. For certain airplanes, that action also proposed to require attaching the power feeder wire bundle to adjacent wire bundles.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 136 airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,820, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–33 Boeing: Amendment 39–12550. Docket 2001–NM–221–AD.

Applicability: Model 737–100, –200, and –200C series airplanes; as listed in Boeing Special Attention Service Bulletin 737–24–1144, Revision 1, dated June 21, 2001; 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 (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 a short circuit and resultant arcing between the power feeder wire bundle for the auxiliary power unit (APU) generator and the first officer's elevator down control cable, which could sever the control cable, and, if combined with a subsequent failure of the captain's elevator down control cable, result in loss of elevator control of the airplane, accomplish the following:

Inspection and Corrective Actions

(a) Within 18 months after the effective date of this AD, perform a one-time detailed visual inspection for damage (i.e., chafing) of the power feeder wire bundle for the APU generator (wire bundle W146) and the first officer's elevator down control cable and for proper separation between that control cable and wire bundle, and attach wire bundle W146 to adjacent wire bundles, as applicable. Do these actions according to Boeing Special Attention Service Bulletin 737–24–1144, Revision 1, dated June 21, 2001.

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.''

(1) If no damage to the control cable or wire bundle is found, and if the distance between the control cable and wire bundle is equal to or greater than the minimum separation distance specified in the service bulletin: No further action is required.

(2) If any damage to the first officer's elevator down cable is found: Before further flight, replace the elevator down control cable with a new cable according to the service bulletin, and do paragraph (a)(4) of this AD.

(3) If any damage to the power feeder wire bundle for the APU generator (wire bundle W146) is found: Before further flight, repair the wire bundle according to the service bulletin, and do paragraph (a)(4) of this AD.

(4) If the distance between the control cable and wire bundle is less than the minimum separation distance specified in the service bulletin: Before further flight, reroute the wire bundle by turning wire bundle clamps to a position that provides minimum separation between the wire bundle and control cable, according to the service bulletin.

Alternative Methods of Compliance

(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, Seattle Aircraft Certification Office (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

(c) 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

(d) The actions shall be done in accordance with Boeing Special Attention Service Bulletin 737–24–1144, Revision 1, dated June 21, 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

(e) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30209 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–220–AD; Amendment 39–12549; AD 2001–24–32]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747SP, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747SP, and 747SR series airplanes. This AD requires a one-time inspection for chafing of certain wire bundles behind the flight engineer's panel; repairs, if necessary; and a modification to reroute a certain electrical wire bundle to ensure sufficient clearance between that wire bundle and an adjacent flood light support bracket. This action is necessary to prevent chafing of certain electrical wire bundles, which could result in smoke in the cockpit, and uncommanded discharge of fire extinguishing bottles for the No. 4 engine and consequent reduction of the ability to fight a fire in the No. 4 engine. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to

include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747SP, and 747SR series airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38214). That action proposed to require a one-time inspection for chafing of certain wire bundles behind the flight engineer's panel; repairs, if necessary; and a modification to reroute a certain electrical wire bundle to ensure sufficient clearance between that wire bundle and an adjacent flood light support bracket.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request To Exclude Modified Airplanes

The commenter requests that the FAA revise the proposed rule to state that airplanes modified according to the original issue of Boeing Service Bulletin 747–25–2407, dated November 18, 1977, are not subject to the inspection specified in paragraph (a) of this AD. The commenter notes that it performed the modification in that service bulletin on its fleet of Model 747 series airplanes more than 20 years ago.

The FAA does not concur with the commenter's request. The original issue of the referenced service bulletin does not contain procedures for an inspection for chafing of affected wire bundles, or repair of chafed wire bundles. We find these actions are necessary to ensure that any chafed wire bundles are found and fixed. Therefore, airplanes modified according to the original issue of the service bulletin are still subject to the inspection and any necessary corrective actions described in Revision 1 of the service bulletin, dated September 23, 1999, as required by paragraphs (a) and (a)(1) of this AD.

Since the issuance of the proposed AD, however, the FAA has reviewed the modification procedures in the original issue of the service bulletin and determined that those procedures are acceptable for accomplishing the modification required by paragraph (a)(2) of this AD. Therefore, a new Note 3 has been added to this AD (and subsequent notes reordered accordingly) to specify that modifications accomplished prior to the effective date of this AD according to the original issue of the service bulletin are considered acceptable for compliance with paragraph (a)(2) of this AD, but the inspection required by paragraph (a) and any applicable corrective actions required by paragraph (a)(1) of this AD must still be accomplished.

Explanation of Change to Applicability Statement

The applicability statement of the proposed AD specified that the proposed AD would apply to certain airplane models as listed in Boeing Alert Service Bulletin 747–25A2407, Revision 1, dated September 23, 1999. For the convenience of affected operators, we have revised the applicability statement of this AD to specify the line numbers of airplanes subject to this AD.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 217 Model 747–100, 747–200B, 747–200C, 747–200F, 747SP, and 747SR series airplanes of the affected design in the worldwide fleet. The FAA estimates that 108 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of required parts per airplane will be negligible. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $77,760, or $720 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–32 Boeing: Amendment 39–12549. Docket 2001-NM–220–AD.

Applicability: Model 747–100, 747–200B, 747–200C, 747–200F, 747SP, and 747SR series airplanes; line numbers 001 through 310 inclusive; 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 (c) 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 chafing of certain electrical wire bundles located behind the flight engineer's panel, which could result in smoke in the cockpit, and uncommanded discharge of fire extinguishing bottles for the No. 4 engine and consequent reduction of the ability to fight a fire in the No. 4 engine, accomplish the following:

One-Time Inspection and Modification

(a) Within 12 months after the effective date of this AD, perform a one-time detailed visual inspection for chafing of wire bundles in the area of the forward upper corner of the P4 flight engineer's panel, outboard of the drip shield. Pay particular attention to wire bundles W528 and W530.

(1) If any chafing is found, before further flight, repair the chafed wire bundles according to Section 20–10–13 of the Boeing Standard Wiring Practices Manual, and do paragraph (a)(2) of this AD.

(2) If no chafing is found, or after chafing has been repaired, before further flight, modify the airplane by rerouting electrical wire bundle W530 to ensure sufficient clearance between that wire bundle and an adjacent flood light support bracket and installing a caterpillar grommet on the flood light supports, according to Boeing Alert Service Bulletin 747–25A2407, Revision 1, dated September 23, 1999.

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.''

Note 3: Modifications accomplished prior to the effective date of this AD according to Boeing Service Bulletin 747–25–2407, dated November 18, 1977, are considered acceptable for compliance with paragraph (a)(2) of this AD. However, the detailed visual inspection required by paragraph (a) and any applicable corrective actions required by paragraph (a)(1) of this AD must still be accomplished.

Operator's Equivalent Procedure

(b) Where Boeing Alert Service Bulletin 747–25A2407, Revision 1, dated September 23, 1999, specifies that installation of a caterpillar grommet may be accomplished per ''your equivalent procedure,'' the procedures must be accomplished per the applicable chapter of the Boeing 747 Overhaul Manual specified in the service bulletin.

Alternative Methods of Compliance

(c) 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 Aircraft Certification Office (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 4: 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

(d) 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

(e) The modification required in paragraph (a)(2) of this AD shall be done in accordance with Boeing Alert Service Bulletin 747–25A2407, Revision 1, dated September 23, 1999. 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

(f) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30208 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–219–AD; Amendment 39–12548; AD 2001–24–31]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires performing a one-time inspection for chafing of certain electrical wire bundles behind the flight engineer's panel in the cockpit; repairing any chafed wire bundles, if necessary; and installing Teflon sleeving over the inspected wire bundles and rerouting them. This action is necessary to prevent burning of electrical wires, which could result in smoke in the cockpit and loss of function of several airplane systems. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38211). That action proposed to require performing a one-time inspection for chafing of certain electrical wire bundles behind the flight engineer's panel in the cockpit; repairing any chafed wire bundles, if necessary; and installing Teflon sleeving over the inspected wire bundles and rerouting them.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request To Allow Use of Other Service Information

The commenter requests that the FAA revise the proposed AD to specify that

accomplishment of the necessary actions according to Boeing Alert Service Bulletin 747–24A2118, Revision 3, dated June 24, 1999, OR EARLIER REVISIONS, is acceptable for compliance. The commenter states that it has done the actions on its airplanes according to revisions of the service bulletin prior to Revision 3 and believes that this meets the intent of the proposed AD.

The FAA concurs and has added Note 3 to this final rule (and reordered subsequent notes accordingly) to state that inspections and follow-on actions accomplished before the effective date of this AD according to Boeing Service Bulletin 747–24–2118, dated February 9, 1989; Revision 1, dated May 11, 1989; or Revision 2, dated December 21, 1989; are acceptable for compliance with the corresponding actions required by this AD.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 443 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 164 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of required parts per airplane will be negligible. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $29,520, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–31 Boeing: Amendment 39–12548. Docket 2001–NM–219–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–24A2118, Revision 3, dated June 24, 1999; 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 (c) 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 chafing and burning of electrical wires, which could result in smoke in the cockpit and loss of function of several airplane systems, accomplish the following:

One-Time Inspection and Follow-On Actions

(a) Within 12 months after the effective date of this AD, do a one-time detailed visual inspection for chafing of certain electrical wire bundles behind the P4 flight engineer's panel in the cockpit, according to Boeing Alert Service Bulletin 747–24A2118, Revision 3, dated June 24, 1999. If any chafing is found, before further flight, repair the chafed wire bundles according to the service bulletin. Before further flight following the inspection and repair, as applicable, wrap the electrical wire bundles with Teflon sleeving and reroute them, according to the service bulletin.

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.''

Note 3: Inspections and follow-on actions accomplished before the effective date of this AD according to Boeing Service Bulletin 747–24–2118, dated February 9, 1989; Revision 1, dated May 11, 1989; or Revision 2, dated December 21, 1989; are acceptable for compliance with the corresponding actions required by this AD.

Operator's Comparable Procedure

(b) Where Boeing Alert Service Bulletin 747–24A2118, Revision 3, dated June 24, 1999, specifies that certain procedures may be accomplished per an ''operator's comparable procedure,'' the procedures must be accomplished per the applicable chapter of the Boeing 747 Airplane Maintenance Manual (AMM) specified in the service bulletin.

Alternative Methods of Compliance

(c) 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 Aircraft Certification Office (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 4: 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

(d) 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

(e) Except as required by paragraph (b) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–24A2118, Revision 3, dated June 24, 1999. 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

(f) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30207 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–218–AD; Amendment 39–12547; AD 2001–24–30]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200C and –200F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–200C and –200F series airplanes, that requires installation of drip shields over certain shelves in the main equipment bay. This action is necessary to prevent water from dripping through floor panels of the main deck cargo bay onto wire bundles and electronic components, which could lead to the loss of function of multiple electronic components and, consequently, could reduce the flight crew's ability to operate in adverse conditions. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–200C and –200F series airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38209). That action proposed to require installation of drip shields over certain shelves in the main equipment bay.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule, including the proposed 18-month compliance time. The commenter states that this is the minimum compliance time that will allow sufficient time for the proposed installation to be accomplished on affected airplanes.

Explanation of Changes to Proposed Rule

Note 2 of this final rule has been revised to correct an error in the reference to Boeing Service Bulletin 747–38–2073.

Also, the statement of unsafe condition in the ''Summary'' section and preceding the requirements of this AD have been revised to clarify that this AD concerns floor panels of the main deck cargo bay.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 59 Model 747–200C and ''200F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 32 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $4,497 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $134,757, or $6,417 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–30 Boeing: Amendment 39–12547. Docket 2001–NM–218–AD.

Applicability: Model 747–200C and ''200F series airplanes, as listed in Boeing Alert Service Bulletin 747–38A2073, Revision 2, dated April 26, 2001; 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 (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 water from dripping through certain floor panels of the main deck cargo bay onto wire bundles and electronic components, which could lead to the loss of function of multiple electronic components and, consequently, could reduce the flight crew's ability to operate in adverse conditions, accomplish the following:

Installation of Drip Shields

(a) Within 18 months after the effective date of this AD, install drip shields (including drip pan assembly, drain tubing, and attaching hardware) over the forward, outboard halves of the E1–1 and E3–1 shelves in the main equipment bay, according to Boeing Alert Service Bulletin 747–38A2073, Revision 2, dated April 26, 2001.

Note 2: Installation done prior to the effective date of this AD according to Boeing Service Bulletin 747–38–2073, dated November 30, 1989, or Revision 1, dated June 21, 1990, is acceptable for compliance with corresponding actions in paragraph (a) of this AD.

Alternative Methods of Compliance

(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, Seattle Aircraft Certification Office (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

(c) 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

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–38A2073, Revision 2, dated April 26, 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

(e) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30206 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–217–AD; Amendment 39–12546; AD 2001–24–29]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires a one-time inspection for chafing between the hose for the passenger oxygen system (hereinafter called the ''oxygen hose'') and adjacent electrical wire bundles at certain passenger service units, and corrective actions, if necessary. This AD also requires rerouting or reorienting the oxygen hose to ensure sufficient clearance between the hose and electrical wire bundles. This action is necessary to prevent chafing between the oxygen hose and adjacent electrical wire bundles, which could result in arcing of a chafed electrical wire bundle and consequent burn-through of the oxygen hose. If this occurs when the oxygen system is pressurized, such arcing could represent a potential ignition source in an oxygen-enriched environment. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38206). That action proposed to require a one-time inspection for chafing between the hose for the passenger oxygen system (hereinafter called the ''oxygen hose'') and adjacent electrical wire bundles at certain passenger service units (PSU), and corrective actions, if necessary. That action also proposed to require rerouting or reorienting the oxygen hose to ensure sufficient clearance between the hose and electrical wire bundles.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from a single commenter.

Request To Extend Compliance Time

The commenter requests that the FAA extend the compliance time for the actions in the proposed AD from 12 months to 18 months after the effective date of the AD. The commenter states that it will take about 40 work hours per airplane to do the proposed actions, and this work would best be performed during a heavy maintenance check where appropriate time and expertise is available.

The FAA concurs with the commenter's request. We find that such an increase in the compliance time will not adversely affect safety and will allow the required actions to be completed during a regularly scheduled maintenance visit. We have revised paragraph (a) of this AD accordingly.

Request To Limit Applicability

The commenter requests that the FAA revise the proposed AD to state that only airplanes with PSU configurations delivered by Boeing and as shown in Boeing Alert Service Bulletin 747–35A2035 are subject to the proposed AD. The commenter states that it has accomplished extensive interior modifications and replaced the PSUs on its airplanes through a supplemental type certificate.

The FAA does not concur with the commenter's request. We do not consider the illustrations contained in Boeing Alert Service Bulletin 747–35A2035, Revision 1, dated July 22, 1999, as revised by Boeing Service Bulletin Information Notice 747–35A2035 IN 01, dated September 23, 1999, to be an adequate method of establishing the applicability of this AD. Because the service bulletin does not indicate that the chafing condition is limited to specific PSU part numbers, all airplanes identified in the effectivity listing of the service bulletin must be considered to be subject to the identified unsafe condition. Note 1 of this AD states that, for airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 469 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 166 airplanes of U.S. registry will be affected by this AD, and that the average airplane has approximately 150 PSUs installed (though the actual number varies considerably between airplane configurations). It will take approximately 38 work hours per airplane (0.25 work hours per PSU) to accomplish the required actions, at the average labor rate of $60 per work hour. Required parts will cost approximately $5,250 per airplane ($35 per PSU). Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $1,249,980, or $7,530 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–29 Boeing: Amendment 39–12546. Docket 2001–NM–217–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–35A2035, Revision 1, dated July 22, 1999; 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 (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 chafing between the oxygen hose and electrical wire bundles at certain passenger service units, which could result in arcing of a chafed wire bundle and consequent burn-through of the oxygen hose, with the arcing potentially representing an ignition source in an oxygen-enriched environment, accomplish the following:

Inspection and Follow-On Actions

(a) Within 18 months after the effective date of this AD, do a detailed visual inspection for chafing between oxygen hoses and electrical wire bundles at the passenger service units (PSU) in the main deck passenger compartment, upper deck sculpted ceiling, personnel accommodation (crew rest) area, lower lobe forward galley, and aft galley; as applicable. Do the inspection according to Boeing Alert Service Bulletin 747–35A2035, Revision 1, dated July 22, 1999, as revised by Boeing Service Bulletin Information Notice 747–35A2035 IN 01, dated September 23, 1999. Before further flight following this inspection, do the corrective actions in paragraphs (a)(1) and (a)(2) of this AD, as applicable, and reroute the oxygen hose or install an elbow at the oxygen mask inlet connector to reorient the oxygen hose away from the electrical wiring, as applicable, to ensure a minimum of 2 inches clearance between the oxygen hose and electrical wire bundle, according to the service bulletin.

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.''

(1) If any chafing of an oxygen hose is found: Replace the chafed oxygen hose with a new oxygen hose, and install protective sleeving over the new oxygen hose, according to the service bulletin.

(2) If any chafing of a wire bundle is found, repair the wire bundle according to the service bulletin.

Note 3: Inspections and follow-on actions done prior to the effective date of this AD according to Boeing Service Bulletin 747–35–2035, dated January 7, 1983, are acceptable for compliance with corresponding actions in paragraph (a) of this AD.

Alternative Methods of Compliance

(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, Seattle Aircraft Certification Office (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 4: 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

(c) 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

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–35A2035, Revision 1, dated July 22, 1999, as revised by Boeing Service Bulletin Information Notice 747–35A2035 IN 01, dated September 23, 1999. 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

(e) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30205 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–210–AD; Amendment 39–12545; AD 2001–24–28]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, that currently requires repetitive visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly, and replacement of the assembly with a new assembly, if necessary. This amendment requires accomplishment of a terminating action for the repetitive inspections. This amendment also adds airplanes to the applicability of the existing AD. This amendment is prompted by the FAA's determination that further rulemaking is necessary. The actions specified by this AD are intended to prevent loss of rudder pedals control and reduction of braking capability.

DATES: Effective January 16, 2002.

The incorporation by reference of McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992, was approved previously by the Director of the Federal Register as of January 22, 1993 (57 FR 60115, December 18, 1992).

The incorporation by reference of the remaining service documents is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–27–06, amendment 39–8440 (57 FR 60115, December 18, 1992), which is applicable to certain McDonnell Douglas Model DC–8 series airplanes, was published in the **Federal Register** on July 23, 2001 (66 FR 38203). The action proposed to continue to require repetitive visual and eddy current inspections to detect cracking of the rudder pedals adjuster hub assembly, and replacement of the assembly with a new assembly, if necessary. That action also proposed to require accomplishment of a terminating action for the repetitive inspections, and to add airplanes to the applicability of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Withdraw Notice of Proposed Rulemaking (NPRM) or Remove Mandatory Requirement for Replacement

The commenter requests that the FAA withdraw the NPRM, since the inspections required by existing AD 92–27–06 provide an appropriate degree of safety assurance. The commenter states that there have been no loss of rudder pedal control incidents reported since the start of the inspections required by AD 92–27–06. The commenter further states that the loss of rudder pedal control by a flightcrew member is a temporary unsafe condition, since the other flightcrew member can immediately control the airplane with his/her rudder pedals. The commenter also states that of the 107 inspections it has performed on DC–8 rudder pedal adjuster hub assemblies since June 1994, no inspections have resulted in finding cracks. The commenter points out that a review of the FAA Service Difficulty Reports database reveals that no DC–8 rudder pedal control has been lost during flight or taxi because of a cracked rudder pedal adjuster hub assembly.

This same commenter suggests in lieu of withdrawing the NPRM to remove the compliance time of ''Prior to the accumulation of 15,000 total landings, or within 3,500 landings after the effective date of this AD'' in paragraph (e) of the NPRM, so that the replacement requirement is optional.

The FAA does not agree with the commenter to withdraw the NPRM or remove the mandatory replacement requirement. As specified in the ''Background'' section of the NPRM, the FAA has determined that, based on the results of investigations described in the NPRM and recommendations of the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), corrective action is necessary to minimize the potential hazards associated with wire and mechanical flight control systems degradation and related causal factors (*e.g.,* inadequate maintenance, contamination, improper repair, and mechanical damage).

In addition, the FAA has determined that long-term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The terminating action required by paragraph (e) of this final rule is consistent with these considerations.

Clarification of Paragraph Reference

Paragraph (c) of the proposed AD states ''If no crack is detected as a result of the inspections required by paragraph (a) of this AD, repeat the inspections at intervals not to exceed 3,500 landings.'' The FAA's intent was that the repeat inspections be accomplished if no crack is detected as a result of the inspection required by paragraph (a) or (b) of this AD, as indicated in service bulletins referenced in the AD. Therefore, we have revised the final rule accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 264 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 245 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 92–27–06 takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $44,100, or $180 per airplane, per inspection cycle.

The new actions that are required by this AD will take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,296 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $1,170,120, or $4,776 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8440 (57 FR 60115, December 18, 1992), and by adding a new airworthiness directive (AD), amendment 39–12545, to read as follows:

2001–24–28 McDonnell Douglas: Amendment 39–12545. Docket 2001–NM–210–AD. Supersedes AD 92–27–06, Amendment 39–8440.

Applicability: Model DC–8 series airplanes, serial numbers 45646 and 45928, and as listed in McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992; 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 (g) 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 loss of rudder pedals control and reduction of braking capability, accomplish the following:

Inspection

(a) For airplanes listed in McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992: Prior to the accumulation of 15,000 landings or within 270 days after January 22, 1993 (the effective date of AD 92–27–06, amendment 39–8440), whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number (P/N) 4616066, in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992, or Revision 2, dated August 5, 1992; or McDonnell Douglas Alert Service Bulletin DC8–27A275R03, Revision 03, dated April 5, 1996. As of the effective date of this AD only McDonnell Douglas Alert Service Bulletin DC8–27A275R03, Revision 03, dated April 5, 1996, shall be used.

(b) For airplanes having serial numbers 45646 and 45928: Prior to the accumulation of 15,000 total landings, or within 270 days after the effective date of this AD, whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, P/N 4616066, in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992, or Revision 2, dated August 5, 1992; or McDonnell Douglas Alert Service Bulletin DC8–27A275R03, Revision 03, dated April 5, 1996. As of the effective date of this AD, only McDonnell Douglas Alert Service Bulletin DC8–27A275R03, Revision 03, dated April 5, 1996, shall be used.

No Crack Found During Inspection Required by Paragraph (a) or (b) of This AD: Repetitive Inspections

(c) If no crack is detected as a result of the inspections required by paragraph (a) or (b) of this AD, repeat the inspections at intervals not to exceed 3,500 landings.

Any Crack Found: Replacement and Repetitive Inspections

(d) If any crack is detected as a result of the inspections required by paragraph (a), (b), or (c) of this AD, prior to further flight, replace the rudder pedals adjuster hub assembly, P/N 4616066, with a new assembly, P/N 5965435–1, in accordance with McDonnell Douglas Alert Service Bulletin DC8–27A275R03, Revision 03, dated April 5, 1996. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of this AD.

Terminating Action

(e) Prior to the accumulation of 15,000 total landings, or within 3,500 landings after the effective date of this AD, whichever occurs later, replace the existing adjuster hub assembly with a new assembly, P/N 5965435–1, per McDonnell Douglas Alert Service Bulletin DC8–27A275R03, Revision 03, dated April 5, 1996. Accomplishment of the replacement constitutes terminating action for the requirements of this AD.

Spares

(f) As of the effective date of this AD, no person shall install an adjuster hub assembly, P/N 4616066, on any airplane.

Alternative Methods of Compliance

(g) 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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(h) 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

(i) The actions shall be done in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992; McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 2, dated August 5, 1992; or McDonnell Douglas Alert Service Bulletin DC8–27A275R03, Revision 03, dated April 5, 1996; as applicable.

(1) The incorporation by reference of McDonnell Douglas DC–8 Alert Service Bulletin A27–275, Revision 1, dated February 3, 1992, was approved previously by the Director of the Federal Register as of January 22, 1993 (57 FR 60115, December 18, 1992).

(2) The incorporation by reference of the remaining service documents is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30204 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–206–AD; Amendment 39–12544; AD 2001–24–27]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; Model DC–9–81, –82, –83, and –87 Series Airplanes; Model MD–88 Airplanes; and C–9 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; Model MD–88 airplanes; and C–9 airplanes, that currently requires repetitive inspections to detect cracking of the rudder pedal adjuster hub assembly, and replacement of the assembly, if necessary. That AD also provides for an optional terminating action for the repetitive inspections. This amendment requires accomplishment of a new terminating action for the repetitive inspections. This amendment is prompted by that FAA's determination that further rulemaking is necessary. The actions specified by this AD are intended to

prevent loss of rudder pedal control and reduction of braking capability.

DATES: Effective January 16, 2002.

The incorporation by reference of McDonnell Douglas Service Bulletin DC9–27–325R02, Revision 02, dated December 12, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of January 16, 2002.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 22, 1993 (57 FR 60116, December 18, 1992), and as of March 25, 1996 (61 FR 6922, February 23, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–02–05, amendment 39–9493 (61 FR 6922, February 23, 1996), which is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; Model MD–88 airplanes; and C–9 airplanes, was published in the **Federal Register** on July 23, 2001 (66 FR 38200). The action proposed to continue to require repetitive inspections to detect cracking of the rudder pedal adjuster hub assembly, and replacement of the assembly, if necessary. The action also proposed to require accomplishment of a new terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests To Withdraw the NPRM

Two commenters request that the FAA withdraw the NPRM, since the inspections required by existing AD 96–02–05 provide an appropriate degree of safety assurance. One commenter states that there have been no loss of rudder pedal control incidents reported since the start of the inspections required by AD 96–02–05. The commenter further states that the loss of rudder pedal control by a flightcrew member is a temporary unsafe condition, since the other flightcrew member can immediately control the airplane with his/her rudder pedals. The commenter also states that of the 304 inspections it has performed on DC–9 rudder pedal adjuster hub assemblies since June 1992, only 2 inspections have resulted in finding cracks. The commenter points out that a review of the FAA Service Difficulty Reports database reveals that no DC–9 rudder pedal control has been lost during flight or taxi because of a cracked rudder pedal adjuster hub assembly.

One commenter provides the following two suggestions in lieu of withdrawing the NPRM:

1. Remove the compliance time of ''Prior to the accumulation of 15,000 total landings, or within 3,500 landings after the effective date of this AD'' in paragraph (c) of the Notice of Proposed Rulemaking (NPRM), so that the replacement and reidentification requirements are optional; or

2. Revise the compliance time specified in paragraph (c) of the NPRM from 18 months to 3,500 landings.

The other commenter also requests that, if further regulatory action is still deemed necessary, the NPRM specify ''more'' frequent inspections rather than mandate a component replacement. The commenter did not suggest what interval would suffice for ''more'' frequent inspections.

The FAA does not agree with the commenters to withdraw the NPRM, remove the mandatory replacement requirement, or require ''more'' frequent inspections. As specified in the ''Background'' section of the NPRM, the FAA has determined that, based on the results of investigations described in the NPRM and recommendations of the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC), corrective action is necessary to minimize the potential hazards associated with wire and mechanical flight control systems degradation and related causal factors (e.g., inadequate maintenance, contamination, improper repair, and mechanical damage).

In addition, the FAA has determined that long-term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The replacement and reidentification required by paragraph (c) of this AD are consistent with these considerations.

Request To Revise the Heading for Paragraph (a) of the NPRM

One commenter notes that the heading of paragraph (a) of the NPRM contains a typographical error. The NPRM reads, ''RESTATEMENT OF REQUIREMENTS OF AD 97–02–05,'' but the correct AD number is AD 96–02–05. The FAA agrees and has revised the final rule to reflect this correction.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,845 Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; Model MD–88 airplanes; and C–9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,086 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 96–02–05 takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $195,480, or $180 per airplane, per inspection cycle.

The new actions that are required by this new AD will take approximately 9 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost

approximately $4,314 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $5,271,444, or $4,854 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9493 (61 FR 6922, February 23, 1992), and by adding a new airworthiness directive (AD), amendment 39–12544, to read as follows:

2001–24–27 McDonnell Douglas: Amendment 39–12544. Docket 2001–NM–206–AD. Supersedes AD 96–02–05, Amendment 39–9493.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; Model MD–88 airplanes; and C–9 series airplanes; as listed in McDonnell Douglas Service Bulletin DC9–27–325R02, Revision 02, dated December 12, 1995; 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of rudder pedals control and reduction of braking capability, accomplish the following:

Restatement of Requirements of AD 96–02–05

Repetitive Inspections and Replacement, If Necessary

(a) For airplanes listed in McDonnell Douglas DC–9 Alert Service Bulletin A27–325R02, Revision 1, dated February 3, 1992: Prior to the accumulation of 15,000 landings or within 270 days after January 22, 1993 (the effective date of AD 92–27–07, amendment 39–8441), whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number 4616066, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325R02, Revision 1, dated February 3, 1992, or Revision 2, dated January 27, 1995.

(1) If no cracks are detected as a result of the inspections required by this paragraph, repeat the inspections at intervals not to exceed 3,500 landings.

(2) If cracks are detected as a result of the inspections required by this paragraph, prior to further flight, replace the rudder pedal adjuster hub assembly, part number 4616066, with a new assembly having the same part number, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325R02, Revision 2, dated January 27, 1995. Thereafter, conduct visual and eddy current inspections of the replacement rudder pedals adjuster hub assembly in accordance with this paragraph.

(b) For airplanes listed in McDonnell Douglas DC–9 Alert Service Bulletin A27–325R02, Revision 2, dated January 27, 1995, and not subject to paragraph (a) of this AD: Prior to the accumulation of 15,000 landings or within 270 days after March 25, 1996 (the effective date of AD 96–02–05, amendment 39–9493), whichever occurs later, conduct a visual and eddy current inspection to detect cracks of the rudder pedals adjuster hub assembly, part number 4616066, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325R02, Revision 1, dated February 3, 1992, or Revision 2, dated January 27, 1995.

(1) If no cracks are detected as a result of the inspections required by this paragraph, repeat the inspections at intervals not to exceed 3,500 landings.

(2) If cracks are detected as a result of the inspections required by this paragraph, prior to further flight, replace the rudder pedals adjuster hub assembly, part number 4616066, with a new assembly having the same part number, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325R02, Revision 2, dated January 27, 1995. Thereafter, conduct visual and eddy current inspections of the replacement rudder pedals adjuster hub assembly in accordance with this paragraph.

New Actions Required By This AD

Replacement and Reidentification

(c) Prior to the accumulation of 15,000 total landings, or within 18 months after the effective date of this AD, whichever occurs later, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–27–325R02, Revision 02, dated December 12, 1995. Accomplishment of the these actions constitutes terminating action for the requirements of this AD.

(1) Replace the existing magnesium casting hub assembly of the rudder pedal adjuster, part number (P/N) 4616066–3, and bearing, P/N AN201KP4A, in the rudder pedal mechanism between stations X=69.000 and X=120.000 in the flight compartment with a new aluminum assembly, part number (P/N) 5965435–3, and new bearing, P/N MS27641–4; and

(2) Reidentify rudder pedal adjuster, P/N 5641294–501 or –503, as P/N 5641294–507.

Note 2: Installation of the aluminum rudder pedal adjuster hub assembly per McDonnell Douglas Service Bulletin DC9–27–325R02, Revision 1, dated November 30, 1994, before the effective date of this AD, is considered acceptable for the requirements of paragraph (c) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

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

Special Flight Permits

(e) 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

(f) The actions shall be done in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A27–325R02, Revision 1, dated February 3, 1992; McDonnell Douglas DC–9 Alert Service Bulletin A27–325R, Revision 2, dated January 27, 1995; or McDonnell Douglas Service Bulletin DC9–27–325R02, Revision 02, dated December 12, 1995; as applicable.

(1) The incorporation by reference of McDonnell Douglas Service Bulletin DC9–27–325R02, Revision 02, dated December 12, 1995, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas DC–9 Alert Service Bulletin A27–325R02, Revision 2, dated January 27, 1995, was approved previously by the Director of the Federal Register as of March 25, 1996 (61 FR 6922, February 23, 1996).

(3) The incorporation by reference of McDonnell Douglas DC–9 Alert Service Bulletin A27–325R02, Revision 1, dated February 3, 1992, was approved previously by the Director of the Federal Register as of January 22, 1993 (57 FR 60116, December 18, 1992).

(4) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30203 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–204–AD; Amendment 39–12543; AD 2001–24–26]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4, A300 B4–600 and B4–600R, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4, A300 B4–600 and B4–600R, and A310 series airplanes, that requires modification of the terminal blocks of the starter feeder line of the auxiliary power unit (APU). This action is necessary to prevent slackness and subsequent overheat and arcing of certain wiring connections. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4, A300 B4–600 and B4–600R, and A310 series airplanes was published in the **Federal Register** on August 27, 2001 (66 FR 44990). That action proposed to require modification of the terminal blocks of the starter feeder line of the auxiliary power unit (APU).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 153 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 to 3 work hours per airplane (depending on configuration) to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $60 to $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–26 Airbus Industrie: Amendment 39–12543. Docket 2001–NM–204–AD.

Applicability: The following airplanes, certificated in any category:

TABLE 1.—APPLICABILITY

Model	Excluding those airplanes modified per Airbus Modification 10212, or Airbus Service Bulletin
A300 B2 and B4 series airplanes	A300–24–0079, Revision 02, dated January 3, 2001.
A300 B4–600 and B4–600R series airplanes	A300–24–6034, Revision 03, dated April 6, 2001.
A310 series airplanes	A310–24–2045, Revision 05, dated April 6, 2001.

Note 1: This AD applies to each airplane 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 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 (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 slackness and subsequent overheat and arcing of certain wiring connections, accomplish the following:

Modification and Replacement

(a) Modify the terminal blocks (including a general visual inspection of the threaded portion of the lugs to detect damage, distortion, or elongation; measurement of stud dimensions; and re-identification of the terminal blocks), as specified by Table 2 of this AD. If any discrepancy is detected, prior to further flight, replace the terminal block with a new part in accordance with the applicable service bulletin. Table 2 follows:

TABLE 2.—MODIFICATION REQUIREMENTS

For Model	Perform the modification in accordance with Airbus Service Bulletin	Prior to the times specified by paragraphs (i) and (ii), whichever occurs later, for each model
(1) A300 B2 and B4 series airplanes.	A300–24–0079, Revision 02, dated January 3, 2001.	(i) The accumulation of 32,000 total flight cycles or 40,000 total flight hours, whichever occurs first. (ii) 3,600 flight cycles after the effective date of this AD.
(2) A300 B4–600 and B4–600R series airplanes.	A300–24–6034, Revision 03, dated April 6, 2001.	(i) The accumulation of 26,000 total flight cycles or 40,000 flight hours, whichever occurs first. (ii) 3,600 flight cycles after the effective date of this AD.
(3) A310 series airplanes	A310–24–2045, Revision 05, dated April 6, 2001.	(i) The accumulation of 26,000 total flight cycles or 40,000 flight hours, whichever occurs first. (ii) 3,600 flight cycles after the effective date of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: Modification, prior to the effective date of this AD, in accordance with Airbus Service Bulletin A300–24–0079, dated March 15, 1993, or Revision 01, dated September 22, 1993 (for Model A300 B2 and B4 series airplanes); A300–24–6034, dated March 15, 1993, Revision 01, dated September 22, 1993; or Revision 02, dated September 7, 1994 (for Model A300 B4–600 and B4–600R series airplanes); or A310–24–2045, dated March 15, 1993, Revision 01, dated September 22, 1993, Revision 02, dated September 7, 1994, Revision 03, dated February 24, 1995, or Revision 04, dated November 24, 1995 (for Model A310 series airplanes); is acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) 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

(d) The actions shall be done in accordance with Airbus Service Bulletin A300–24–0079, Revision 02, dated January 3, 2001; Airbus Service Bulletin A300–24–6034, Revision 03, dated April 6, 2001; or Airbus Service Bulletin A310–24–2045, Revision 05, dated April 6, 2001; as applicable. 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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.

Note 5: The subject of this AD is addressed in French airworthiness directive 2001–266(B), dated June 27, 2001.

Effective Date

(e) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30202 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–104–AD; Amendment 39–12542; AD 2001–24–25]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, and –40 Series Airplanes and C–9 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, and –40 series airplanes and C–9 airplanes. This amendment requires modification of the spoiler control system, and installation of protective interlock box assemblies in the spoiler circuit. This amendment is necessary to prevent smoke/fire in the flight compartment in the event that the automatic spoiler actuator overheats, and/or loss of the spoiler control system, which could significantly reduce the braking effectiveness of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, and –40 series airplanes and C–9 airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38198). That action proposed to require modification of the spoiler control system, and installation of protective interlock box assemblies in the spoiler circuit. That action was proposed to prevent smoke/fire in the flight compartment in the event that the automatic spoiler actuator overheats, and/or loss of the spoiler control system, which could significantly reduce the braking effectiveness of the airplane.

Since the Issuance of the NPRM

The FAA has been advised by the manufacturer that there may be a problem in supplying an adequate number of parts to modify the spoiler control system and to install protective interlock box assemblies in the spoiler circuit within the 1-year compliance time proposed in the NPRM. Consequently, we have extended the compliance times of paragraphs (a) and (b) of this AD to within 18 months after the effective date of this AD. We have determined that such an extension of the compliance times will accommodate the time necessary for affected operators to order, obtain, modify, and install certain parts necessary to accomplish the requirements of paragraph (a) and (b) of the AD, without adversely affecting safety.

Public Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Clarify Requirements

The commenter states that the service bulletin (Boeing Alert Service Bulletin DC9–27A–147, Revision 03, dated May 8, 2001) referenced in the proposed rule specifies that Service Bulletin DC9–27–103 should be incorporated as a prerequisite. However, the commenter states that Service Bulletin DC9–27–103 is not mentioned in the proposed rule. The commenter concludes that compliance with the other service bulletin is implied, but not mandated by the proposed rule. The FAA infers that the commenter is requesting clarification.

The FAA acknowledges the request for clarification. Paragraph (a) of the final rule requires modification of the spoiler control system per Boeing Alert Service Bulletin DC9–27A147, which references Boeing Service Bulletin DC9–27–103. Specifically, however, paragraph (b) of the final rule does require installation of protective interlock box assemblies in the spoiler circuit per McDonnell Douglas DC–9 Service Bulletin 27–103, dated March 19, 1968. The compliance time for accomplishing that installation is clearly stated in paragraph (b) of the final rule as: ''Prior to or in conjunction with the requirements of paragraph (a) of this AD.'' No change to the final rule is necessary.

Request To Revise Reference to Service Information

The commenter requests that the FAA revise the proposed rule to require the procedures described in Boeing Service Bulletin DC9–27–283, which further modifies the spoiler interlock box by replacing the relay with an improved 6-pole double throw relay. Additionally, the commenter suggests that a ''proposed'' service bulletin that modifies the interlock box with the 6-pole relay and an ''as-yet-undefined'' service bulletin that describes procedures for modifying interlock boxes without the 6-pole relay be considered by the FAA. The commenter states that these service bulletins have been issued or soon will be issued.

The FAA does not concur with the request to add additional service information to the final rule. Installation of the time-delay relay (as part of the actions required by this AD) will terminate power to the actuator in 10 seconds after energizing the spoiler automatic actuator, and provides adequate protection against overheating of the actuator. To add further requirements to this rule as the commenter proposed, we would have to reissue the Notice of Proposed

Rulemaking (NPRM) as a Supplemental NPRM in order to provide an appropriate time for public comment. Furthermore, we cannot require implementation of actions of service bulletins not yet developed and approved by the FAA. Therefore, we find that, in order to adequately address the unsafe condition in a timely manner, implementation of the required actions as proposed are warranted.

Request To Revise the Cost Estimate

This same commenter also requests that the 3 work hours estimated in the proposed rule for the installation of the protective interlock box assemblies in the spoiler circuit be revised to 24 work hours. The commenter also requests that the estimated cost of replacement parts specified as $20 in the proposed rule be revised to $2,750. The commenter provides this justification based on information retrieved from its SCEPTRE database.

The FAA does not concur that the cost estimates should be revised. We used the work hours specified in McDonnell Douglas DC–9 Service Bulletin 27–103(which is referenced in the AD as the appropriate source of service information for accomplishment of the required installation). We note that the economic analysis of this AD represents the time necessary to perform only the actions actually required by this AD. We recognize that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. As indicated in the preamble of the NPRM, the cost analysis in AD rulemaking actions typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Therefore, no change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 504 Model DC–9–10, –20, –30, and –40 series airplanes and C–9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 272 airplanes of U.S. registry will be affected by this AD.

It will take approximately 5 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $937 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $336,464, or $1,237 per airplane.

It will take approximately 3 work hours per airplane to accomplish the proposed installation, and the average labor rate is $60 per work hour. Required parts would cost approximately $20 per airplane. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $54,400, or $1,237 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–25 McDonnell Douglas: Amendment 39–12542. Docket 2001–NM–104–AD.

Applicability: Model DC–10–10, –20, –30, and –40 series airplanes, and C–9 airplanes, as listed in Boeing Alert Service Bulletin DC9–27A147, Revision 03, dated May 8, 2001; 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 (c) 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 smoke/fire in the flight compartment in the event that the automatic spoiler actuator overheats, and/or loss of the spoiler control system, which could significantly reduce the braking effectiveness of the airplane; accomplish the following:

Modification of the Spoiler Control System

(a) Within 18 months after the effective date of this AD, modify the spoiler control system by accomplishing all actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–27A147, Revision 03, dated May 8, 2001, per the service bulletin.

Note 2: Modification per McDonnell Douglas Service Bulletin DC9–27–147, dated January 7, 1972; Revision 1, dated July 30, 1974; or Revision 2, dated May 9, 1975; before the effective date of this AD; is considered acceptable for compliance with paragraph (a) of this AD.

Installation of Protective Interlock Box Assemblies

(b) Prior to or in conjunction with the requirements of paragraph (a) of this AD, install protective interlock box assemblies in the spoiler circuit, per McDonnell Douglas DC–9 Service Bulletin 27–103, dated March 19, 1968.

Alternative Methods of Compliance

(c) 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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

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

Special Flight Permit

(d) 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

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin DC9–27A147, Revision 03, dated May 8, 2001, and McDonnell Douglas DC–9 Service Bulletin 27–103, dated March 19, 1968; as applicable. 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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30201 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–103–AD; Amendment 39–12541; AD 2001–24–24]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10 and –30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10 and –30 series airplanes, that requires an inspection of the power feeder cable for evidence of chafing, and repair of any chafed power feeder cable. This amendment also requires replacement of the wiring support clip (standoff) of the power feeder cable with a new, improved wiring support clip. This action is necessary to prevent chafing and arcing of the power feeder cable and adjacent airplane structure and system components, and consequent smoke/fire in an engine nacelle. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10 and –30 series airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38195). That action proposed to require an inspection of the power feeder cable for evidence of chafing, and repair of any chafed power feeder cable. That action also proposed to require replacement of the wiring support clip (standoff) of the power feeder cable with a new, improved wiring support clip.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 162 Model DC–9–10 and –30 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 107 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $102 or $204 per airplane depending on the airplane configuration. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $17,334 or $28,248; or $162 or $264 per airplane depending on the airplane configuration.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–24 McDonnell Douglas: Amendment 39–12541. Docket 2001–NM–103–AD.

Applicability: Model DC–9–10 and –30 series airplanes, as listed in Boeing Alert Service Bulletin DC9–24A160, Revision 02, dated March 14, 2001; 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 (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 chafing and arcing of the power feeder cable and adjacent airplane structure and system components, and consequent smoke/fire in an engine nacelle, accomplish the following:

Inspection; Repair, if Necessary; and Replacement

(a) Within 12 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per Boeing Alert Service Bulletin DC9–24A160, Revision 02, dated March 14, 2001.

(1) Do a general visual inspection of the power feeder cable for evidence of chafing, and repair any chafed power feeder cable.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Replace the wiring support clip (standoff) of the power feeder cable with a new, improved wiring support clip.

Note 3: Inspection, repair, and replacement per McDonnell Douglas Service Bulletin DC9–24–160, dated January 4, 1996, or Revision 01, dated March 7, 1996, before the effective date of this AD is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) 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

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin DC9–24A160, Revision 02, dated March 14, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30200 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–98–AD; Amendment 39–12540; AD 2001–24–23]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F series airplanes, that requires modification of the battery ground cable installation in the center accessory compartment (CAC). The actions specified by this AD are intended to prevent a loose ground stud and/or cable attachments, and consequent chafing of adjacent structure and electrical arcing, which could result in smoke/fire in the CAC in the event of fuel leakage. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10), and –40 series airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38193). That action proposed to require modification of the battery ground cable installation in the center accessory compartment.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Withdraw Proposed AD

The commenters object to the proposed AD as being unnecessary. One operator, having operated affected airplanes for 29 years, reports that the subject battery ground stud and cable installations have been inspected numerous times during this period in accordance with the FAA-approved DC–10 maintenance program. This operator notes that there has been no history of arcing due to loosening of the ground stud and cable attachments. The commenter adds that any deterioration related to arcing would have been identified and corrected by the maintenance program.

The FAA does not concur with the request to withdraw the proposed AD. The FAA acknowledges that Model DC–10 series airplanes have an extensive life of service and that numerous inspections have been performed as part of the FAA-approved DC–10 maintenance program. (All operators are required to maintain their airplanes in accordance with an FAA-approved maintenance program as required for continued airworthiness.) However, the FAA finds that the subject inspections of the maintenance program do not adequately address certain in-service difficulties and thus do not adequately address the identified unsafe condition. Therefore, the FAA has determined that the proposed rule is appropriate and warranted.

Request To Extend Compliance Time

In lieu of withdrawal of the proposed AD, the commenters request an extension of the proposed compliance time. The commenters state that the extensive in-service history concerning the subject area supports an extension of the compliance time. In addition, the commenters assert that the proposed actions would be best accommodated during planned multiple-day maintenance visits within a compliance time of 18 months.

The FAA does not concur. Due to the degree of urgency associated with addressing the subject unsafe condition, an 18-month compliance time would not provide an adequate level of safety. Therefore, no change to the final rule is necessary in this regard.

Request To Revise Cost Estimate

The commenters disagree with the proposed AD's estimate of 2 work hours required for the modification. The commenters estimate that the modification would take 9.5 work hours.

The FAA has reconsidered the amount of time necessary to accomplish the modification and has increased its estimate to 5 work hours per airplane. The cost impact section of this final rule has been revised accordingly.

Explanation of Change to Applicability

The FAA finds that Model DC–10–10F, –30F, and –40F series airplanes were not specifically identified by model in the applicability of the proposed AD; however, they were identified by manufacturer's fuselage numbers in McDonnell Douglas Alert Service Bulletin DC10–24A174, dated June 29, 2001 (which was referenced in the applicability statement of the proposed AD for the identification of the specific affected airplanes). Therefore, the FAA has revised the applicability throughout the final rule to include Model DC–10–10F, –30F, and –40F series airplanes.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 402 airplanes of the affected design in the worldwide fleet. The FAA estimates that 312 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,282 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $805,584, or $2,582 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is

contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–23 McDonnell Douglas: Amendment 39–12540. Docket 2001–NM–98–AD.

Applicability: Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F series airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC10–24A174, dated June 29, 2001; 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 (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 a loose ground stud and/or cable attachments, and consequent chafing of adjacent structure and electrical arcing, which could result in smoke/fire in the center accessory compartment (CAC) in the event of fuel leakage, accomplish the following:

Modification

(a) Within 12 months after the effective date of this AD, modify the battery ground cable installation in the CAC per McDonnell Douglas Alert Service Bulletin DC10–24A174, dated June 29, 2001.

Alternative Methods of Compliance

(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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) 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

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A174, dated June 29, 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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30199 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–97–AD; Amendment 39–12539; AD 2001–24–22]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –10F, –30, –30F (KC–10A and KDC–10), –40, and –40F Series Airplanes; and Model MD–10–10F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –10F, –30, –30F (KC–10A and KDC–10), –40, and –40F series airplanes; and Model MD–10–10F series airplanes. This AD requires an inspection of the power feeder cable assembly of the auxiliary power unit (APU) for chafing, correct type of clamps, and proper clamp installation; and corrective actions, if necessary. The actions specified by this AD are intended to prevent loss of the APU generator due to chafing of the generator power feeder cables, and consequent electrical arcing and smoke/fire in the APU compartment. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount

Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –30, –30F (KC–10A and KDC–10), and –40 series airplanes; and Model MD–10–10F series airplanes; was published in the **Federal Register** on July 23, 2001 (66 FR 38191). That action proposed to require an inspection of the power feeder cable assembly of the auxiliary power unit (APU) for chafing, correct type of clamps, and proper clamp installation; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Clarify Requirements and Extend Compliance Time

The commenters request that the proposed AD be revised to clarify whether the inspection requirement includes verifying the clamp part number. The commenters assert that the proposed AD underestimates the work hours necessary to accomplish the inspection, if the part number verification is also required. The commenters request that the compliance time be extended to accommodate the anticipated additional work hours. According to the commenters, the APU generator must be removed for easy access to the subject support cables—which are installed in an extremely confined space—to verify the part number. The commenters estimate that the inspection, including removal of the APU generator, would take 22.5 work hours. Because the task is best suited to planned multiple-day maintenance visits, the commenters anticipate extended downtime for the affected airplanes and request that the compliance time be extended from 12 months to 18 months.

The FAA partially concurs. In light of the possible confusion regarding certain requirements of the AD, the FAA has determined that clarification may be necessary. Therefore, paragraph (a) has been revised in this final rule to include verification of the clamp part number.

However, the FAA does not concur with the request to extend the compliance time. The FAA has confirmed with the manufacturer that, while removing the APU generator might improve accessibility to the inspection area, it is not necessary. Further, as indicated in the proposed AD, the cost estimates represent only the time necessary to perform the specific actions actually required by the AD. Those figures typically do not include incidental costs, such as the time required to gain access. This AD does not require removal of the APU generator to perform the inspection. Therefore, the work hour estimate in the proposed AD is appropriate, and the proposed compliance time of 12 months is sufficient. No change to the final rule is necessary in this regard.

Clarification to Final Rule Requirements

Paragraph (a)(1) of the proposed AD describes the conditions for which no corrective action is required (''If no wire chafing, correct type of clamps, and proper clamp installation are found * * *''). Because of the potentially misleading description of these negative inspection findings, paragraph (a)(1) has been revised in this final rule to more accurately distinguish the conditions that require corrective action.

Explanation of Change to Applicability

The FAA finds that Model DC–10–10F, –30F, and –40F series airplanes were not specifically identified by model in the applicability of the proposed AD; however, they were identified by manufacturer's fuselage numbers in Boeing Alert Service Bulletin DC10–24A137, Revision 01, dated May 31, 2001 (which was referenced in the applicability statement of the proposed AD for the identification of the specific affected airplanes). Therefore, the FAA has revised the applicability throughout the final rule to include Model DC–10–10F, –30F, and –40F series airplanes.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 372 airplanes of the affected design in the worldwide fleet. The FAA estimates that 282 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $16,920, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–22 McDonnell Douglas: Amendment 39–12539. Docket 2001–NM–97–AD.

Applicability: Model DC–10–10, –10F, –30, –30F (KC–10A and KDC–10), –40, and –40F series airplanes; and Model MD–10–10F series airplanes; as listed in Boeing Alert Service Bulletin DC10–24A137, Revision 01, dated May 31, 2001; 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 (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 loss of the auxiliary power unit (APU) generator due to chafing of the generator power feeder cable and consequent electrical arcing and smoke/fire in the APU compartment, accomplish the following:

Inspection and Corrective Action(s), if Necessary

(a) Within 12 months after the effective date of this AD, do a general visual inspection of the power feeder cable assembly of the APU for chafing, correct type (including part number) of clamps, and proper clamp installation, per Boeing Alert Service Bulletin DC10–24A137, Revision 01, dated May 31, 2001.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) Condition 1. If no signs of wire chafing are found, and all clamps are of the correct type (including the correct part number), and are installed properly, no further action is required by this AD.

(2) Condition 2. If any wire chafing, incorrect type of any clamp (including incorrect part number), or improper clamp installation is found, before further flight, do applicable corrective action(s) (e.g., repair, replace, and modify discrepant part) per the Accomplishment Instructions of the service bulletin.

Note 3: Accomplishment of the inspection and any applicable corrective actions, per Boeing Service Bulletin DC10–24–137, dated September 15, 1987, before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) 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

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin DC10–24A137, Revision 01, dated May 31, 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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30198 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–96–AD; Amendment 39–12538; AD 2001–24–21]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes, and Model MD–10–10F and –30F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes, that currently requires a one-time detailed visual inspection to determine if wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, and corrective actions, if necessary. This amendment also requires revising the wire bundle support clamp installation at the flight engineer's station. This action is necessary to prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed through and consequent electrical arcing, which could result in smoke and fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of January 16, 2002.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated July 28, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 21, 2000 (65 FR 31253, May 17, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton,

Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–10–03, amendment 39–11727 (65 FR 31253, May 17, 2000), which is applicable to certain McDonnell Douglas Model DC–10 series airplanes, and Model MD–10–10F and –30F series airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38188). The action proposed to continue to require a one-time detailed visual inspection to determine if wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, and corrective actions, if necessary. The action also proposed to require revising the wire bundle support clamp installation at the flight engineer's station.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Withdraw Proposed AD

The commenter requests that the proposed AD be withdrawn. The commenter states that it recently inspected the subject harness installation per AD 2000–10–03 on airplanes with a minimum of 13 years in service and a maximum of 29 years in service. The inspections revealed no chafed or damaged wires or broken support clamps. Therefore, the commenter concludes that the requirements of the proposed AD are unnecessary.

The FAA does not agree. As discussed in the preamble of the proposed AD, we determined that the revision of the wire bundle support clamp installation required by AD 2000–10–03 for certain airplanes does not adequately address the identified unsafe condition. In addition, we determined that all affected airplanes must incorporate this new, improved support clamp, because the procedures specified in McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated July 28, 1999 (which was referenced in AD 2000–10–03 as the appropriate source of service information), do not prevent electrical arcing or chafing even if no chafed or damaged wire bundles located behind the flight engineer's panel were found during the required one-time inspection. Therefore, we find that the requirements of this AD are warranted to adequately address the identified unsafe condition.

Request To Revise Compliance Time

If the AD is issued as proposed, the commenter requests that the compliance time for the proposed revision of the wire bundle support clamp installation be revised from 1 year to 18 months. The commenter states that the work scope of the proposed AD is best suited for ''a planned multiple-day maintenance visit.''

The FAA does not agree. In developing an appropriate compliance time for this action, we considered not only those safety issues in developing an appropriate compliance time for this action, but the recommendations of the manufacturer, and the practical aspect of accomplishing the required revision within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. In consideration of all of these factors, we determined that the compliance time, as proposed, represents an appropriate interval in which the required revision can be accomplished in a timely manner within the fleet and still maintain an adequate level of safety.

In addition, the FAA finds that operators of affected airplanes on the U.S. Register should have already accomplished the one-time inspection required by paragraph (a) of this AD (the effective date for compliance was June 21, 2001) which is a restatement of the requirements of AD 2000–10–03). Operators are given credit for work previously performed by means of the phrase in the ''Compliance'' section of the AD that states, ''Required as indicated, unless accomplished previously.'' Therefore, operators should be able to accomplish the additional work of revising the wire bundle support clamp installation required by paragraph (b) of this AD within the 1-year compliance time during regularly scheduled maintenance intervals. However, under the provisions of paragraph (c) of this AD, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Revise Work Hours

The commenter disagrees with the FAA's estimate of two work hours to accomplish the revision of the wire bundle support clamp installation in the Cost Impact section of the proposed AD. The commenter estimates four work hours per airplane, because of the confined space and numerous wire bundles in the area of the modification.

The FAA does not concur. We used the work hours specified in Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001 (which is referenced in the AD as the appropriate source of service information for accomplishment of the required modification). We note that the economic analysis of this AD represents the time necessary to perform only the actions actually required by this AD. We recognize that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. As indicated in the preamble of the notice of proposed rulemaking (NPRM), the cost analysis in AD rulemaking actions typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Therefore, no change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 412 Model DC–10 series airplanes and Model MD–10–10F and –30F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 2000–10–03, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $18,000, or $60 per airplane.

The new actions that are required in this AD action will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these

figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $36,000, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11727 (65 FR 31253, May 17, 2000), and by adding a new airworthiness directive (AD), amendment 39–12538, to read as follows:

2001–24–21 McDonnell Douglas: Amendment 39–12538. Docket 2001–NM–96–AD. Supersedes AD 2000–10–03, Amendment 39–11727.

Applicability: Model DC–10 series airplanes, and Model MD–10–10F and –30F series airplanes; as listed in Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001; 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 (c) 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 chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed through and consequent electrical arcing, which could result in smoke and fire in the cockpit, accomplish the following:

Restatement of Certain Requirements of AD 2000–10–03

Inspection and Repair, If Necessary

(a) Within 1 year after June 21, 2000 (the effective date of AD 2000–10–03, amendment 39–11727), perform a one-time detailed visual inspection to determine if the wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated July 28, 1999, or Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001. If any damaged or chafed wire is found, prior to further flight, repair in accordance with the alert service bulletin.

Note 2: For the purposes of this AD, a detailed 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.''

New Actions Required by this AD

Revision of Wire Bundle Support Clamp Installation

(b) Within 1 year after the effective date of this AD, revise the wire bundle support clamp installation at the flight engineer's station, per Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001.

Alternative Methods of Compliance

(c) 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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

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

Special Flight Permits

(d) 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

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated July 28, 1999; or Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin DC10–24A149, Revision 02, dated April 5, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated July 28, 1999, was approved previously by the Director of the Federal Register as of June 21, 2000 (65 FR 31253, May 17, 2000).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30197 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–95–AD; Amendment 39–12537; AD 2001–24–20]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10 Military), and –40 Series Airplanes; and Model MD–10–10F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10 military), and –40 series airplanes; and Model MD–10–10F series airplanes, that requires an inspection to verify that the wire connections at circuit breakers are properly connected, and correction of any incorrect wire connection at the circuit breakers. This amendment is necessary to prevent loss of protection by the circuit breakers in the flight engineer's equipment panel due to improperly wired connections at the circuit breakers, which could result in wire damage and could lead to smoke and/or fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10 military), and –40 series airplanes; and Model MD–10–10F series airplanes, was published in the **Federal Register** on July 23, 2001 (66 FR 38185). That action proposed to require an inspection to verify that the wire connections at circuit breakers are properly connected, and correction of any incorrect wire connection at the circuit breakers.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 352 Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10 military), and –40 series airplanes; and Model MD–10–10F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 259 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $15,540, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–20 McDonnell Douglas: Amendment 39–12537. Docket 2001–NM–95–AD.

Applicability: Model DC–10–10, –15, –30, –30F (KC–10A and KDC–10 military), and –40 series airplanes; and Model MD–10–10F series airplanes, as listed in Boeing Alert Service Bulletin DC10–24A130, Revision 01, dated March 12, 2001; 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 (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 loss of protection by the circuit breakers in the flight engineer's equipment panel due to improperly wired connections at the circuit breakers, which could result in wire damage and could lead to smoke and/or fire in the cockpit, accomplish the following:

Inspection, and Corrective Action, If Necessary

(a) Within 1 year after the effective date of this AD, do a general visual inspection to verify that the wire connections at circuit breakers are properly connected, per Boeing Alert Service Bulletin DC10–24A130, Revision 01, dated March 12, 2001. If any wire connection at a circuit breaker is found improperly connected, before further flight, correct that wire connection at the circuit breaker per the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: Inspection and correction of improper wire connection done before the effective date of this AD per Boeing (McDonnell Douglas) Service Bulletin DC10–24–130, dated October 2, 1985, are considered acceptable for the requirements of this AD.

Alternative Methods of Compliance

(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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(c) 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

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin DC10–24A130, Revision 01, dated March 12, 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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30196 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–297–AD; Amendment 39–12536; AD 2001–24–19]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; C–9 Airplanes; Model DC–9–81, –82, –83, and –87 Series Airplanes; and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; and Model MD–88 airplanes, that requires an inspection to detect chafing or overheat damage of the electrical wires located at fuselage station Y=110.000 bulkhead of the lower nose left tunnel; and corrective actions, if necessary. This AD also requires replacing the external power ground stud with a new ground stud using new attaching parts, torquing new attachments, and installing a nameplate. This action is necessary to prevent loose external power ground wires, which could cause arcing and overheated wire insulation and consequent smoke/fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Effective January 16 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; and Model MD–88 airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38183). That action proposed to require an inspection to detect chafing or overheat damage of the electrical wires located at fuselage station Y=110.000 bulkhead of the lower nose left tunnel; and corrective actions, if necessary. That action also proposed to require replacing the external power ground stud with a new ground stud using new attaching parts, torquing new attachments, and installing a nameplate.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. Although the commenters generally support the proposed rule, they have made a number of recommendations, as described in the following paragraphs.

Requests for More Specific Inspection and Repair/Replacement Instructions

On behalf of its members, the Air Transport Association of America requests that the proposed AD be modified to include more specific details for wire location, bundle numbers, and allowable damage limits. The commenters' specific requests are described in the following paragraphs.

• One commenter requests that more detailed work instructions for the specific area or wire bundle be included either in Boeing Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000, or the proposed AD. The commenter states that Figure 1 in the service bulletin does not include specific details as to the location of the wiring within the left tunnel and does not specify the bundle numbers. In addition, that figure includes details for only the ground stud location, buildup, and placard location, and does not include the necessary details for wiring installation.

• One commenter requests that either the proposed AD or Boeing Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000, be revised to clearly identify the wiring damage limits used to determine whether to repair or replace the wiring. The commenter contends that the service bulletin should at least provide specific chapter, page, and task number references in the Aircraft Maintenance Manual (AMM) and Standard Wiring Practices Manual (SWPM). The work instructions in the service bulletin provide only a general reference to the AMM and SWPM.

The FAA does not concur. We point out that the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000, provides a specific reference to Chapter 20 of the AMM and Chapter 20 of the SWPM for repair of electrical wiring. We consider that the procedures referenced in those documents include the specific details required to enable operators to accomplish any necessary corrective actions. Therefore, no change to the final rule is necessary in this regard.

Request To Revise the Compliance Time for the Corrective Actions

One commenter requests revising the compliance time for the corrective actions in the proposed AD. The proposed AD would require those actions to be accomplished in conjunction with the wiring inspection before further flight. However, the commenter contends that, if wiring damage is found, continued operation of the airplane should be allowed provided external electrical power is not used, as provided for in the master minimum equipment list (MMEL). This would allow operators to accomplish any extensive wiring repairs at maintenance stations where the required tools and materials are available. If no damage is found, replacement of ground studs and installation of nameplates should be allowed prior to the compliance deadline. This would allow inspections to be accomplished at the maximum number of stations while allowing operators to concentrate on the required materials at a limited number of stations.

The FAA partially concurs. We agree that the compliance time in paragraph (b) of the final rule should be changed to allow operators that do not find any chafing or damage during the inspection required by paragraph (a) of this AD to accomplish the corrective actions within 18 months after the effective date of this AD instead of before further flight. We consider that such a change still provides an adequate level of safety for the fleet. However, because of the safety implications and consequences associated with chafing or overheat damage of the electrical wires located at fuselage station Y=110.000 bulkhead of the lower nose left tunnel, the corrective actions specified by paragraphs (c) and (d) of this AD must be accomplished before further flight. Further, we do not consider it appropriate to allow continued operation on a revenue-bearing flight when the external electrical power is not used. Paragraph (b) of the final rule has been changed accordingly.

Request To Revise the Torque Value and Modify the Nameplate

One commenter requests revising the torque value in the proposed AD to require the standard torque value of 85 to 95 in-lb, and modification of the nameplate to indicate the higher torque value for the jam nut. The commenter states that it began inspections and modifications on some of its fleet per McDonnell Douglas Alert Service Bulletin DC9–24–135 in 1999, but discontinued those inspections after it was notified that the jam nut torque seemed inadequate to keep the wire connection from moving. Investigation revealed that the 70 in-lb torque value specified in the service bulletin was lower than that specified in both Douglas Process Standard 1.834–6 and Section 20–20–03 of the SWPM, which show the standard torque value for an AN315 jam nut to have a torque value of 85 to 95 in-lb. The commenter states that it was informed by the manufacturer, Boeing, that the 70-in-lb torque value is adequate, but that it has no technical objection to a 90-in-lb torque value. The commenter considers it necessary to comply with the 70-in-lb torque value specified in the service bulletin. However, since the intent of the proposed AD and the service bulletin is to prevent loose external power ground wires and consequent arching and overheating of the wire installation, the commenter does not understand why the service bulletin requires a lower torque value than the standard torque value cited in the referenced Boeing documents.

The FAA does not concur. After careful review of the referenced service bulletin, we have determined that the torque values specified in the Accomplishment Instructions of the service bulletin are adequate. In addition, we point out that the commenter has not provided substantial evidence regarding the necessity of requiring a higher torque value for the ground stud installation. For these reasons, we have determined that no change to the final rule is necessary in this regard.

Explanation of Changes Made to This Final Rule

The FAA has revised paragraphs (c) and (d) of the final rule to clarify that the limits of any chafing or damage are referenced in McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000. In addition, in paragraphs (c) and (d) of the proposed AD, we inadvertently included the phrase ''if necessary'' instead of ''as applicable,'' and have revised those paragraphs in the final rule to reflect this clarification.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,908 Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 967 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $35 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $149,885, or $155 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–19 McDonnell Douglas: Amendment 39–12536. Docket 99–NM–297–AD.

Applicability: Model DC–9–10, –20, –30, –40, and -50 series airplanes; C–9 airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; and Model MD–88 airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000; 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if 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 loose external power ground wires, which could cause arcing and overheated wire insulation and consequent smoke/fire in the cockpit, accomplish the following:

Inspection

(a) Within 18 months after the effective date of this AD, do a general visual inspection to detect chafing or overheat damage of the electrical wires located at fuselage station Y=110.000 bulkhead of the lower nose left tunnel, per McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Condition 1 (No Chafing or Damage)

(b) If no chafing or overheat damage is detected during the inspection required by paragraph (a) of this AD, within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD per McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000.

(1) Replace the external power ground stud with a new ground stud using new attaching parts.

(2) Torque the new attachments.

(3) Install nameplate (includes applying silicone primer and adhesive/sealant).

Note 3: Accomplishment of the actions identified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD per McDonnell Douglas DC–9 Service Bulletin 24–135, dated April 14, 1993, before the effective date of this AD, is considered acceptable for compliance with the requirements of paragraph (b) of this AD.

Condition 2 (Chafing or Damage Within Limits)

(c) If any chafing or damage is detected within the limits referenced in McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000, before further flight, repair damage; perform a continuity test to check the integrity of the wiring, and repair as applicable; and do the actions required by paragraphs (b)(1), (b)(2), and (b)(3) of this AD; per the alert service bulletin.

Condition 3 (Chafing or Damage Beyond Limits)

(d) If any chafing or damage is detected beyond the limits referenced in McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000, before further flight, replace any damaged wire with a new wire; perform a continuity test to check the integrity of the wiring, and repair as applicable; and do the actions required by paragraphs (b)(1), (b)(2), and (b)(3) of this AD; per the alert service bulletin.

Alternative Methods of Compliance

(e) 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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(f) 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

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–24A135, Revision 01, dated May 1, 2000. 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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30195 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–296–AD; Amendment 39–12535; AD 2001–24–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –30, and –40 Series Airplanes and C–9 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –30, and –40 series airplanes and C–9 airplanes, that requires revising the wiring of the sidewall lights in the forward and aft passenger compartment. The actions specified by this AD are intended to prevent the control switch of the cabin sidewall lights on the forward attendant's panel from overheating, which could result in shorting of the dim, bright, and power terminals, and consequent smoke/fire in the passenger compartment. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –30, and –40 series airplanes and C–9 airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38180). That action proposed to require revising the wiring of the sidewall lights in the forward and aft passenger compartment.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Change Applicability

One commenter recommends that, because the proposed rule cites a specific Douglas service bulletin, which, in turn, cites a specific set of part numbers, the proposed rule apply only to those airplanes that have not been modified and still use the original Douglas switch and transformer assemblies. Another commenter also recommends that the proposed rule be changed to apply only to airplanes that have not been modified. The first commenter states that Note 1 of the proposed rule specifies that the rule applies to airplanes identified in the applicability provision, regardless of whether the airplanes have been modified, altered, or repaired in the area affected by the AD. The commenter also notes that paragraph (a) of the proposed rule references McDonnell Douglas Alert Service Bulletin DC9–33A062, Revision 01, dated April 24, 2000, which identifies specific switch and transformer part numbers that need to be reworked to prevent the possibility of a shorted switch causing the flight attendant switch panel to overheat. The commenter adds that as part of its ''Interior 2000'' modification it removed the switches and transformers cited in the referenced service bulletin, and now uses a different switch with a different part number, and does not use the transformers at all.

The FAA does not concur with the requests to revise the applicability in the final rule to specify unmodified airplanes only. If an airplane has been modified in such a manner that the service information referenced in the final rule does not apply, Note 1 of the final rule states that the owner/operator must request an alternative method of compliance (AMOC). If the commenter can provide data that show that an acceptable level of safety can be achieved through the modification it described, the commenter may request approval of an AMOC in accordance with paragraph (b) of this AD. No change to the final rule is necessary in this regard.

Explanation of Change Made to the Final Rule

The FAA has changed paragraph (a) of the final rule that requires revising the wiring of the sidewall lights in the forward and aft passenger compartments, per McDonnell Douglas Alert Service Bulletin DC9–33A062, Revision 01, dated April 24, 2000, and McDonnell Douglas DC–9 Service Bulletin 33–63, dated May 6, 1976. The FAA inadvertently used ''and'' instead of ''or'' for revising the wiring per both service bulletins; however, either service bulletin may be used for accomplishment of the action.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 588 Model DC–9–10, –30, and –40 series airplanes and C–9 airplanes of the affected design in the worldwide fleet. The FAA

estimates that 288 airplanes of U.S. registry will be affected by this AD, that it will take approximately 21 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $500 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $506,880, or $1,760 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–18 McDonnell Douglas: Amendment 39–12535. Docket 99–NM–296–AD.

Applicability: Model DC–9–10, –20, –30, and –40 series airplanes and C–9 airplanes, as listed in McDonnell Douglas Alert DC9–33A062, Revision 01, dated April 24, 2000; 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 (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 the control switch of the cabin sidewall lights on the forward attendant's panel from overheating, which could result in shorting of the dim, bright, and power terminals, and consequent smoke/fire in the passenger compartment, accomplish the following:

Revision of Wiring

(a) Within 1 year after the effective date of this AD, revise the wiring of the sidewall lights in the forward and aft passenger compartments, per McDonnell Douglas Alert Service Bulletin DC9–33A062, Revision 01, dated April 24, 2000, or McDonnell Douglas DC–9 Service Bulletin 33–63, dated May 6, 1976.

Note 2: Revising the wiring before the effective date of this AD per McDonnell Douglas DC–9 Service Bulletin 33–62, dated February 11, 1976, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

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

Special Flight Permits

(c) 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

(d) The action shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–33A062, Revision 01, dated April 24, 2000; and McDonnell Douglas DC–9 Service Bulletin 33–63, dated May 6, 1976. 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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30194 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–295–AD; Amendment 39–12534; AD 2001–24–17]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; C–9 Airplanes; and Model DC–9–81, –82, and –83 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40,

and –50 series airplanes; C–9 airplanes; and Model DC–9–81, –82, and –83 series airplanes. This AD requires modification of the light switch for the cargo compartment(s). This action is necessary to prevent generation of smoke and fire in a cargo compartment due to an illuminated light with a missing cover contacting cargo contents for an extended period of time. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; and Model DC–9–81, –82, and –83 series airplanes; was published in the **Federal Register** on July 23, 2001 (66 FR 38178). That action proposed to require modification of the light switch of the applicable cargo compartments.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Withdraw the Proposed AD

The Air Transport Association (ATA), on behalf of its members, recommends that the FAA withdraw the proposed AD. The commenter states that the proposed AD does not increase the level of safety, because it does not address the root cause of the incident (i.e., the missing cover from the cargo compartment light). The commenter suggests that, instead of the proposed modification, the FAA should mandate scheduled maintenance action. In an attached comment, one ATA member recommends repetitive inspections to verify that the light cover is installed, as well as rewiring of the cargo door switch to the cargo light switch, so the cargo light cannot stay on. In another attached comment, another ATA member recommends changes to the Master Minimum Equipment List (MMEL) to prohibit operation of the airplane with a missing light cover, unless the exposed bulb is removed or the lighting system for the cargo compartment(s) is deactivated. The ATA and one of its members also point out that all airplanes that would be subject to the proposed AD are required by Federal Aviation Regulations to have a smoke and fire detection and suppression system installed in the cargo compartment(s) of the airplane.

The FAA does not concur with the request to withdraw the proposed AD. In the ''Identification of Unsafe Condition'' section of the proposed AD, we explain that the identified unsafe condition related not only to the cover missing from the cargo compartment light, but also the fact that the light did not automatically shut off when the cargo compartment was closed. Thus, we have determined that the action required by this AD (i.e., modification of the light switch in the cargo compartment) is adequate to address the identified unsafe condition. Under paragraph (b) of this AD, we may consider a request for approval of an alternative means of compliance (AMOC) with this AD, provided that data are submitted that show that the means of compliance provides an acceptable level of safety.

With regard to the commenters' suggestions to mandate scheduled maintenance action or revise the MMEL, the mechanism that exists to rectify an FAA finding that an unsafe condition exists is an amendment to part 39 of the Federal Aviation Regulations (14 CFR part 39). In addition, under existing bilateral airworthiness agreements, we are obligated to advise foreign airworthiness authorities of unsafe conditions relating to products produced in the United States, and the means of doing this is an amendment to part 39.

No change to the final rule is necessary in this regard.

Request To Revise Applicability of Proposed AD

One commenter requests that, if the FAA does not agree to withdraw the proposed AD, it revise the applicability of the proposed AD to exclude airplanes equipped with a certain smoke and fire detection and suppression system installed in the cargo compartment(s) by a certain supplemental type certificate (STC). The commenter points out that the unsafe condition addressed by the proposed AD requires three events to occur: a missing cover on the cargo compartment light, cargo stacked against that light, and the light being illuminated for the entire flight. The commenter states that the STC for installing the referenced smoke and fire detection and suppression system specifies a restriction against stacking cargo within two inches of the ceiling of the cargo compartment. Thus, there would be no contact with the cargo compartment light located in the ceiling, and the unsafe condition addressed by the proposed AD would not occur.

We do not concur with the request to revise the applicability of this AD. Note 1 of this AD specifies that, if an airplane has been modified in such a manner that the service information referenced in this AD does not apply, the owner/operator must request approval of an AMOC in accordance with paragraph (b) of this AD. For us to approve such a request, the owner/operator must provide data that show that an acceptable level of safety is achieved through installation of the smoke and fire detection and suppression system and the procedural changes to which the commenter refers. No change to the final rule is necessary in this regard.

Request To Add Repetitive Inspections

One commenter requests that the FAA require repetitive inspections following the proposed modification of the light switch for the cargo compartment(s). The inspections would ensure that the guard is still installed over the light switch. The commenter suggests that these inspections could be added to the maintenance program. The commenter's request is based on maintenance reports from its fleet of airplanes, which have been modified per the service bulletin referred to in the proposed AD. The maintenance reports show that the guard over the light switch breaks frequently because of chafing between the guard and the door structure during the numerous opening and closing

cycles of the cargo compartment door during daily ground handling.

We acknowledge the concerns of the commenter, but do not concur with its request. We have received information indicating that breakage of the guard over the light switch, such as that noted by the commenter, may occur if cargo handlers rely upon the guard to extinguish the light in the cargo compartment, rather than MANUALLY extinguishing the cargo compartment light and closing the switch guard before closing the cargo door. We also have received information that the cargo loading document for the airplanes subject to this AD will be revised in the near future to specifically state that the cargo compartment light must be manually extinguished before closing the door. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,068 Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; and Model DC–9–81, –82, and –83 series airplanes; of the affected designs in the worldwide fleet. The FAA estimates that 525 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost between $1,147 and $2,332 per airplane depending on the airplane configuration. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be between $633,675 and $1,255,800, or $1,207 and $2,392 per airplane, depending on the airplane configuration.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–17 McDonnell Douglas: Amendment 39–12534. Docket 99–NM–295–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; and Model DC–9–81, –82, and –83 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC9–33A081, Revision 01, dated November 8, 1999; 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 (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 generation of smoke and fire in a cargo compartment due to an illuminated light with a missing cover contacting cargo contents for an extended period of time, accomplish the following:

Modification

(a) Within 1 year after the effective date of this AD, modify the light switch for the cargo compartment(s) per McDonnell Douglas Alert Service Bulletin DC9–33A081, Revision 01, dated November 8, 1999.

Note 2: Modification before the effective date of this AD per McDonnell Douglas DC–9 Service Bulletin 33–81, dated January 19, 1987, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

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

Special Flight Permits

(c) 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

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–33A081, Revision 01, dated November 8, 1999. 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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30193 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–294–AD; Amendment 39–12533; AD 2001–24–16]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes and C–9 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 airplanes. This AD requires an inspection to detect chafing or damage at the conduit and support bracket interface in the forward electrical power center (EPC); and repair or replacement of wires with new wires, if necessary. For certain airplanes, this AD also requires installation of grommets on the conduits of the forward EPC. These actions are necessary to prevent chafing of electrical cables in the forward EPC and a possible short within a conduit, which could result in smoke and fire in the cockpit. These actions are intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38176). That action proposed to require an inspection to detect chafing or damage at the conduit and support bracket interface in the forward electrical power center (EPC); and repair or replacement of wires with new wires, if necessary. For certain airplanes, that action also proposed to require installation of grommets on the conduits of the forward EPC.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request To Withdraw the Proposed AD

The Air Transport Association (ATA) of America, on behalf of its members, recommends that the FAA withdraw the proposed AD. The ATA notes that its members generally do not agree that the proposed AD is needed. One ATA member observes (in a member comment attached to the ATA's comment) that it has accomplished the work described in the referenced service bulletin and found that the metal edge of the conduit is smooth and does not pose a potential chafing hazard on its airplanes. The member states that the only incident of chafing occurred during a maintenance check, not in the course of normal fleet operations.

The FAA does not concur with the request to withdraw the proposed rule. Though the commenter asserts that this AD is unnecessary because there have been no incidents during normal fleet operation, we find that the potential for such chafing exists, as shown by the report of a chafed electrical cable in the forward EPC which we described in the proposed AD. Such chafing may occur during maintenance or operations. This AD addresses that potential unsafe condition. No change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 403 Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 380 airplanes of U.S. registry will be affected by this AD.

For all airplanes, it will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $22,800, or $60 per airplane.

For airplanes subject to the modification requirement of this AD, it will take approximately 1 work hour per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this modification is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a

''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–16 McDonnell Douglas: Amendment 39–12533. Docket 99–NM–294–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC9–24A115, Revision 01, dated April 24, 2000; 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 (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 chafing of the electrical cables in the forward electrical power center (EPC) and a possible short within a conduit, which could result in smoke and fire in the cockpit, accomplish the following:

Inspection; Corrective Action, if Necessary; and Installation of Grommets, if Applicable

(a) Within 1 year after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, per McDonnell Douglas Alert Service Bulletin DC9–24A115, Revision 01, dated April 24, 2000.

(1) For Groups 1 and 2 airplanes identified in the service bulletin: Do a general visual inspection to detect chafing or damage at the conduit and support bracket interface in the forward EPC. If any chafing or damage is detected, before further flight, repair or replace wires with new wires, per the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) For Group 1 airplanes identified in the service bulletin: Install grommets on the conduits of the forward EPC.

Alternative Methods of Compliance

(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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

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

Special Flight Permits

(c) 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

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–24A115, Revision 01, dated April 24, 2000. 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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30192 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–292–AD; Amendment 39–12532; AD 2001–24–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –30, and –40 Series Airplanes and C–9 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –30, and –40 series airplanes and C–9 airplanes, that requires an inspection to detect chafing of the wiring of the attendants' work light of the aft cabin, and repair of chafed wiring. This AD also requires modification and reidentification of the attendants' work light assemblies of the aft cabin. This action is necessary to prevent chafing of the ground wire against the positive contact of the lamp of the attendants' work light of the aft cabin, and consequent arcing or arcing damage to the wiring of the attendants' work light and transformer of the aft cabin. Such arcing or arcing damage could result in short circuits and consequent smoke and fire in the aft cabin area. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A

(D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –30, and –40 series airplanes and C–9 airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38173). That action proposed to require an inspection to detect chafing of the wiring of the attendants' work light of the aft cabin, and repair of chafed wiring. That action also proposed to require modification and reidentification of the attendants' work light assemblies of the aft cabin.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests To Revise the Applicability of the Proposed AD

One commenter requests that the applicability of the proposed AD be revised to ''Model DC–9–10, –30, and –40 series airplanes and C–9 airplanes, equipped with an attendants' work light in the aft cabin; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000.'' The commenter states that airplanes without an attendants' work light are not susceptible to the identified unsafe condition of the proposed AD. The commenter also states that such a change would reduce requests for alternative methods of compliance (AMOC).

The FAA agrees with the commenter and has revised the final rule accordingly.

One commenter requests that the applicability of the proposed AD be revised to apply only to those airplanes on which the affected light assembly, part number L19020–1 or L19145–1, has been installed. The commenter notes that it no longer uses the referenced part number affected by the proposed AD, and that it uses a different lamp assembly, which is not susceptible to identified unsafe condition of the proposed AD.

The FAA does not concur. The commenter did not provide any specific data with regard to its ''Interior 2000'' modification. Therefore, we are unable to determine whether such a configuration is not subject to the identified unsafe condition. However, under the provisions of paragraph (b) of this AD, the FAA may consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety. No change to the final rule has been made is this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 176 Model DC–9–10, –30, and –40 series airplanes and C–9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 111 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection and modification, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,660, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended].

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–15 McDonnell Douglas: Amendment 39–12532. Docket 99-NM–292-AD.

Applicability: Model DC–9–10, -30, and -40 series airplanes and C–9 airplanes, equipped with an attendants' work light in the aft cabin; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000.

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 (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 arcing or arcing damage to the wiring of the attendants' work light of the aft cabin due to chafing of the ground wire against the positive contact of the lamp of the attendants' work light and transformer of the aft cabin, which could result in short circuits and consequent smoke and fire in the aft cabin area, accomplish the following:

Inspection; Corrective Actions, if Necessary; Modification; and Reidentification

(a) Within 1 year after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD, per McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000.

(1) Do a general visual inspection to detect chafing of the wiring of the attendants' work light of the aft cabin. If any chafing is detected, before further flight, repair chafed wiring per the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Modify and reidentify the attendants' work light assemblies of the aft cabin.

Note 3: Inspections, repairs, modifications, and reidentifications done before the effective date of this AD per McDonnell Douglas Service Bulletin DC9–33–058, dated June 5, 1973, or Revision 1, dated November 26, 1975, are considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) 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

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–33A058, Revision 02, dated January 27, 2000. 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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30191 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–291–AD; Amendment 39–12531; AD 2001–24–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; C–9 Airplanes; and Model DC–9–81, –82, –83, and –87 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; and Model DC–9–81, –82, –83, and –87 series airplanes, that requires an inspection of the power feeder bus cables of the auxiliary power unit (APU) for overheat damage between certain fuselage stations; and corrective action(s), if necessary. This action is necessary to prevent loose terminal stud connections and consequent damage to the small copper terminals, which could result in overheating of the wires at the terminal strip. Such overheating could cause an electrical failure and could result in smoke and fire in the electrical/electronic compartment. This action is intended to address the identified unsafe condition.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; Model DC–9–81, –82, –83, and –87 series airplanes; and Model MD–88 airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38170). That action proposed to require an inspection of the power feeder bus cables of the auxiliary power unit (APU) for overheat damage between certain fuselage stations; and corrective action(s), if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Allow Continued Operation of the Airplane With Damaged Wiring

One commenter requests that the FAA revise paragraph (c) of the proposed AD to allow for continued operation of the airplane with damaged wiring provided that the APU electrical power is not used per the Master Minimum Equipment List (MMEL). The commenter states that such a change would allow for any extensive wiring repairs to be programmed for maintenance stations where the necessary tools and materials are available.

The FAA does not concur. We have determined that, due to the safety implications and consequences associated with such overheat damage, any subject power feeder bus cable that is found to be damaged must be repaired or replaced before further flight. We do not consider it appropriate to render the APU inoperative and allow continued operation on a revenue bearing flight with a known discrepancy until such a time that the required repair or replacement can be accomplished. No change to the final rule is necessary in this regard.

Request To Delay Issuance of Final Rule

One commenter requests that issuance of the final rule be delayed until the Work Instructions of McDonnell Douglas Alert Service Bulletin DC9–24A072, Revision 01, dated May 22, 2000 (which is referenced as the appropriate source of service information in this AD), are revised. The commenter provides several examples of information that needs to be clarified and that is missing.

The FAA does not agree with the commenter's request to delay issuance of the final rule. We do agree to clarify the following information provided by the commenter:

1. The commenter states that ''View A–A'' of the referenced service bulletin should pertain to Group 2 airplanes, as well as Group 1 airplanes. However, the FAA notes that on page 1 of 16 in the referenced service bulletin, it states ''Group 1—Applicable to airplanes, which have not been modified by prior issue of this service bulletin, equipped with APU feeder cables that require inspection, terminal stud stackup revision and torquing nameplate.'' The key words here are ''requires terminal stud stackup revision, and torquing nameplate.'' These words are not found in the Group 2 definition on page 1 of 16. View A–A refers to the name plate and stacking.

2. The commenter states that no term codes were given in the referenced service bulletin. The FAA notes that term code 1184 is called out in the referenced service bulletin on page 10. Paragraph K. on page 8 of the referenced service bulletin references Douglas Process Standard (DPS) 1.834–40.2. The term code can be found in Table 5.2 in the DPS. The DPS also references the Standard Wiring Practices Manual (SWPM), Chapter 20. The term code also can be found in 20–00–16, page 298.6 and page 243 (details for termination) in DPS 1.834–40.2.

3. The commenter states that no crimp tool code had been noted in the referenced service bulletin. The FAA notes that the crimp tool code can be found in DPS 1.834–40.2, Table 5.1, which is referenced in the service bulletin. It can also be found in SWPM 20–20–03, page 290.

4. The commenter states that no torque value was given in the referenced service bulletin. The FAA notes that the torque value can be found on the nameplate pertaining to the affected terminal strip. It also can be found in SWPM 20–00–03.

5. The commenter states that there was no requirement for a continuity check after the repair. The FAA notes that the continuity check can be found in the referenced service bulletin on page 12, paragraph 3.C.

Explanation of Change to Applicability

The airplane manufacturer has informed the FAA that, although the effectivity of McDonnell Douglas Alert Service Bulletin DC9–24A072, Revision 01, dated May 22, 2000, specifies ''MD–80,'' the listing of affected manufacturer's fuselage numbers does NOT include Model MD–88 airplanes. McDonnell Douglas Model MD–88 airplanes are not subject to the identified unsafe condition. Therefore, we have removed that airplane model from the applicabilty of the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 550 Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; and Model DC–9–81, –82, –83, and –87 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 450 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $27,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–14 McDonnell Douglas: Amendment 39–12531. Docket 99–NM–291–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; C–9 airplanes; and Model DC–9–81, –82, –83, and –87 series airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC9–24A072, Revision 01, dated May 22, 2000; 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical failure due to overheated wires at the terminal strip, which could result in smoke and fire in the electrical/electronic compartment, accomplish the following:

General Visual Inspection

(a) Within 1 year after the effective date of this AD, do a general visual inspection of the power feeder bus cables of the auxiliary power unit (APU) for overheat damage between fuselage stations Y=160.000 (Item No. S3–287) and Y=148.000 (Item No. S3–23), per McDonnell Douglas Alert Service Bulletin DC9–24A072, Revision 01, dated May 22, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Condition 1 (No Evidence of Damage)

(b) If no damage is detected during the inspection required by paragraph (a) of this AD, do the applicable action specified in paragraph (b)(1) or (b)(2) of Table 1 of this AD, per McDonnell Douglas Alert Service Bulletin DC9–24A072, Revision 01, dated May 22, 2000. Table 1 is as follows:

TABLE 1.—CONDITION 1

For airplanes identified in the referenced service bulletin as * * *	Action	By
(1) Group 1	Revise the wiring installation and replace the nameplate with a new nameplate.	Before further flight.
(2) Group 2	Revise the wiring installation	Before further flight.
(3) Group 3	No further action is required by this AD	[Reserved].

Condition 2 (Evidence of Damage)

(c) If any damage is detected during the inspection required by paragraph (a) of this AD, do the applicable action(s) specified in paragraph (c)(1), (c)(2), or (c)(3) of Table 2 of this AD, per McDonnell Douglas Alert Service Bulletin DC9–24A072, Revision 01, dated May 22, 2000. Table 2 is as follows:

TABLE 2.—CONDITION 2

For airplanes identified in the referenced service bulletin as * * *	Action	By
(1) Group 1	(i) Repair or replace wiring with new wiring; and	Before further flight.
	(ii) Revise wiring installation; and	Before further flight.
	(iii) Replace nameplate with a new nameplate	Before further flight.
(2) Group 2	(i) Repair or replace wiring with new wiring; and	Before further flight.
	(ii) Revise wiring installation	Before further flight.
(3) Group 3	(i) Repair wiring, or	Before further flight.
	(ii) Replace wiring with new wiring	Before further flight.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

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

Special Flight Permits

(e) 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

(f) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–24A072, Revision 01, dated May 22, 2000. 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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30190 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–288–AD; Amendment 39–12530; AD 2001–24–13]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, and –40 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, and –40 series airplanes, that requires rework and reidentification of certain reflector assemblies of the passenger ceiling lights; and installation of a support channel above the reflector, as applicable. This amendment is prompted by reports of heat damaged lamp reflectors and scorched insulation blankets in the main cabin due to the lamps inside the reflectors creating high temperatures. The actions specified by this AD are intended to prevent overheating of the lamp reflectors, which could result in smoke and fire in the main cabin.

DATES: Effective January 16, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, and –40 series airplanes was published in the **Federal Register** on July 23, 2001 (66 FR 38168). That action proposed to require rework and reidentification of certain reflector assemblies of the passenger ceiling lights; and installation of a support channel above the reflector, as applicable. The proposed actions were intended to prevent overheating of the lamp reflectors, which could result in smoke and fire in the main cabin.

Since the Issuance of the NPRM

The FAA has been advised by the manufacturer that there may be a problem in supplying an adequate number of kits to rework reflector assemblies within the 1-year compliance time proposed in the NPRM. Consequently, we have extended the compliance time of paragraph (a) of this AD (which requires rework and reidentification of the reflector assemblies of the passenger ceiling lights and the installation of a support channel above the reflector) to within 18 months after the effective date of this AD. We have determined that such an extension of the compliance time will accommodate the time necessary for affected operators to order, obtain, and rework and identify the reflector assemblies, without adversely affecting safety.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests To Revise the Applicability

Two commenters request that the applicability of the proposed AD be revised to specify that the requirements would apply only to airplanes with certain parts installed. One commenter notes that it has replaced the interior of its Model DC–9 fleet with new overhead lighting, and that the interior no longer has the same parts or even the same technology as that specified in McDonnell Douglas Alert Service Bulletin DC9–33A037, Revision 02, dated July 27, 1999 (the appropriate service information specified in the proposed AD). That same commenter suggests that the applicability be revised to specify that the proposed AD would apply only to airplanes that are still using the original Douglas lamp, reflector, and resistor assemblies.

The FAA does not concur with the requests to revise the applicability of the AD. The FAA generally makes every effort to limit the applicability of ADs as close as possible to the actual affected airplanes. The applicability of this final rule is based on information stated in the manufacturer's service bulletin at the time the service bulletin was published (July 27, 1999). Furthermore, it would be virtually impossible to address every conceivable alteration of airplane structure in the applicability of an AD, or to revise an AD's applicability every time an alteration of structure is approved. Since airplanes with altered structures are the exception, not the norm, it is more practical from a workload and cost-effectiveness standpoint to make ADs applicable generally to the affected fleet and to deal with special considerations individually. In the commenter's particular case, where airplanes have been modified so that it could be demonstrated that an unsafe condition does not exist, the operator may simply request approval of an alternative method of compliance to the AD in accordance with the provisions specified in paragraph (b) of this AD. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increases the economic burden on any operator nor increases the scope of the AD.

Cost Impact

There are approximately 273 Model DC–9–10, –20, –30, and –40 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 177 airplanes of U.S. registry will be affected by this AD, that it will take between 8 and 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost between $1,607 and $6,463 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $369,399 and

$1,271,391, or between $2,087 and $7,183 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–24–13 McDonnell Douglas: Amendment 39–12530. Docket 98–NM–288–AD.

Applicability: Model DC–9–10, –20, –30, and –40 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC9–33A037, Revision 02, dated July 27, 1999; 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 (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 overheating of the lamp reflectors, which could result in smoke and fire in the main cabin, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD, rework and reidentify the reflector assemblies of the passenger ceiling lights and install a support channel above the reflector, as applicable, in accordance with McDonnell Douglas Alert Service Bulletin DC9–33A037, Revision 02, dated July 27, 1999.

Note 2: Rework and reidentification of reflector assemblies, and installation of support channels prior to the effective date of this AD in accordance with McDonnell Douglas Service Bulletin DC9–33–037, dated July 18, 1968, or Revision 1, dated May 6, 1971, is an acceptable method of compliance for the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(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, Los Angeles Aircraft Certification Office (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, Los Angeles ACO.

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

Special Flight Permit

(c) 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

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–33A037, Revision 02, dated July 27, 1999. 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 Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 16, 2002.

Issued in Renton, Washington, on November 28, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30189 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30284; Amdt. No. 2083]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase.—Individual SIAP copies may be obtained from:

1. FAA public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription.—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK. 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5. U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAP by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on December 7, 2001.

James J. Ballough,

Director, Flight Standards Service.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending § 97.23 VOR,VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC Date	State	City	Airport	FDC Number	Subject
10/29/01	KS	Hays	Hays Regional	1/1731	VOR/DME Rwy 16, Amdt 3C
10/29/01	KS	Hays	Hays Regional	1/1733	GPS Rwy 16, Orig–B
10/29/01	KS	Hays	Hays Regional	1/1734	VOR/DME Rwy 34, Amdt 2C
10/29/01	KS	Hays	Hays Regional	1/1735	ILS Rwy 34, Orig
11/01/01	TX	Houston	West Houston	1/1830	VOR–D Orig
11/01/01	TX	La Porte	La Porte Muni	1/1899	RNAV (Gps) Rwy 30, Orig
11/01/01	TX	La Porte	La Porte Muni	1/1908	NDB Rwy 30, Amdt 2
11/01/01	TX	Houston	Clover Field	1/1909	RNAV (GPS) Rwy 32L, Orig
11/20/01	KY	Covington	Cincinnati/Northe Rn Kentucky Intl	1/2589	ILS Rwy 36R (Cat I, II, III), Amdt 5
11/20/01	NC	Elizabeth City	Elizabeth City Coast Guard Air Station/ Regional.	1/2592	NDB Rwy 10, Orig-B
11/20/01	NE	Hastings	Hastings Muni	1/2595	VOR OR GPS Rwy 4, Amdt 5A
11/23/01	CA	Sacramento	Sacramento Intl	1/2648	NDB Rwy 16R, Amdt 10A
11/23/01	CA	Sacramento	Sacramento Intl	1/2649	ILS Rwy 16R (Cat I, Cat II, Cat III), Amdt 13A
11/26/01	FL	Miami	Miami Intl	1/2676	RNAV(GPS) Rwy 12, Orig
11/26/01	FL	Miami	Miami Intl	1/2677	RNAV(GPS) Rwy 27R, Orig
11/26/01	FL	Miami	Miami Intl	1/2683	RNAV(GPS) Rwy 30, Orig
11/27/01	CA	Sacramento	Sacramento Intl	1/2701	ILS Rwy 16L, Orig-A
11/27/01	CA	Sacramento	Sacramento Intl	1/2702	ILS Rwy 34L, Amdt 5A
11/27/01	NE	Columbus	Columbus Muni	1/2708	GPS Rwy 14 Orig
11/29/01	MI	Clare	Clare Muni	1/2780	VOR or GPS–A, Amdt 1A
12/03/01	NY	Plattsburgh	Plattsburgh Intl	1/2879	ILS Rwy 17, Orig
12/03/01	NY	New York	La Guardia	1/2881	ILS Rwy 22, Amdt 18A
12/03/01	NY	New York	La Guardia	1/2883	NDB or GPS Rwy 22, Amdt 12A
12/03/01	IN	Muncie	Delaware County Johnson Field	1/2898	ILS Rwy 32, Amdt 9

[FR Doc. 01–30753 Filed 12–11–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30283; Amdt. No. 2082]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure

identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on December 7, 2001.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective December 27, 2001*

Marina, CA, Marina Muni, VOR RWY 11, Orig
Marina, CA, Marina Muni, VOR RWY 29, Orig
Marina, CA, Marina Muni, RNAV (GPS) RWY 11, Orig
Marina, CA, Marina Muni, RNAV (GPS) RWY 29, Orig
San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 10L, Orig
San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 28R, Orig
Blackfoot, ID, McCarley Field, VOR/DME RWY 1, Orig
Blackfoot, ID, McCarley Field, RNAV (GPS) RWY 1, Orig
Blackfoot, ID, McCarley Field, RNAV (GPS) RWY 19, Orig
Blackfoot, ID, McCarley Field, VOR/DME RWY 19, Orig
Memphis, TN, Memphis Intl, LOC RWY 18, Orig
Memphis, TN, Memphis Intl, ILS RWY 35, Orig
Kemmerer, WY, Kemmerer Muni, RNAV (GPS) RWY 34, Orig
Kemmerer, WY, Kemmerer Muni, RNAV (GPS) RWY 16, Orig

** * * Effective February 21, 2002*

Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, ILS RWY 9L, Amdt 19
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RNAV (GPS) RWY 13, Orig
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RNAV (GPS) RWY 31, Orig
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RNAV (GPS) RWY 9L, Orig
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RNAV (GPS) RWY 9R, Orig
Waterloo, IA, Waterloo Muni, RNAV (GPS) RWY 6, Orig
Waterloo, IA, Waterloo Muni, RNAV (GPS) RWY 18, Orig
Waterloo, IA, Waterloo Muni, RNAV (GPS) RWY 24, Orig
Waterloo, IA, Waterloo Muni, RNAV (GPS) RWY 36, Orig
Waterloo, IA, Waterloo Muni, VOR RWY 6, Amdt 3
Waterloo, IA, Waterloo Muni, GPS RWY 6, Orig CANCELLED
Fergus Fall, MN, Fergus Falls Muni-Einar Mickelson Field, VOR OR GPS RWY 13, Orig-A
Fergus Fall, MN, Fergus Falls Muni-Einar Mickelson Field, NDB OR GPS RWY 31, Amdt 1A
Marshall, MN, Marshall Muni-Ryan Field, VOR/DME RWY 30, Amdt 2A
Marshall, MN, Marshall Muni-Ryan Field, GPS RWY 30, Orig-A
Newark, NJ, Newark Intl, NDB RWY 4R, Amdt 7
Newark, NJ, Newark Intl, NDB RWY 4L, Amdt 11
Newark, NJ, Newark Intl, ILS RWY 4R, Amdt 12
Newark, NJ, Newark Intl, ILS RWY 4L, Amdt 13
Newark, NJ, Newark Intl, ILS RWY 22L, Amdt 11
Newark, NJ, Newark Intl, RNAV (GPS) RWY 4R, Orig
Newark, NJ, Newark Intl, RNAV (GPS) RWY 4L, Orig
Newark, NJ, Newark Intl, RNAV (GPS) RWY 22R, Orig
Angel Fire, NM, Angel Fire, RNAV (GPS) RWY 17, Orig
Medford, OR, Rogue Valley International-Medford, VOR/DME RWY 14, Amdt 5

Note: The FAA published the following procedure in Docket No. 30279; Amdt No. 2078 to Part 97 of the Federal Aviation Regulations (Vol. 66, FR No. 223, Page 57862; dated Monday, November 19, 2001) under section 97.23 effective December 27, 2001 which is hereby rescinded:

Angel Fire, NM, Angel Fire, RNAV (GPS) RWY 17, Orig

[FR Doc. 01–30752 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Parts 3 and 4

Rules of Practice

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rules.

SUMMARY: The Commission is updating and making other technical corrections and changes to Parts 3 and 4 of its regulations on Organization, Procedures and Rules of Practice.

EFFECTIVE DATE: These rule amendments will be effective on December 12, 2001.

FOR FURTHER INFORMATION CONTACT: Marianne Watts, Office of General Counsel, FTC, 600 Pennsylvania

Avenue, NW., Washington, DC 20580, (202) 326–3074, mwatts@ftc.gov.

SUPPLEMENTARY INFORMATION: The Commission is amending Parts 3 and 4 of its Rules, 16 CFR Parts 3 and 4, to update and make other technical clarifications, corrections, and changes to the Rules, as follows.

Consent Agreement Settlements

Matters in administrative litigation may be withdrawn from adjudication pursuant to a motion to consider a proposed consent agreement. If the proposed consent agreement is executed by complaint counsel, the Bureau Director responsible for supervising complaint counsel typically reviews and approves the terms of the proposed consent agreement. The Bureau Director then indicates his or her approval on an approval line. Rule 3.25(c) is being amended to eliminate the suggestion that the Bureau Director is one of complaint ''counsel.''

Orders Requiring Witnesses to Testify or Provide Other Information and Granting Immunity

Rule 3.39 (a) is being amended to clarify the actual roles of Directors and Assistant Directors of the Bureaus and Regional Directors and Assistant Regional Directors for the Commission's Regional Offices with respect to the issuance of orders requiring a witness to testify or provide information and granting immunity under Title 18, section 6002 of the United States Code. As currently written, Rule 3.39 (a) may suggest that such Directors and Assistant Directors themselves typically present evidence in support of an administrative complaint. To remove the potentially erroneous suggestion, Rule 3.39(a) is being revised to state that such Directors and Assistant Directors have supervisory authority over complaint counsel, who, as attorneys, are typically responsible for performing this function.

Appearances

Rule 4.1 (a)(2)(ii) is being amended to correct certain typographical errors. As originally promulgated in 1983, Rule 4.1 (a)(2)(ii) read as follows: ''At the request of counsel representing any party in an adjudicative proceeding, the Administrative Law Judge may permit an expert in the same discipline as an expert witness to conduct all or a portion of the cross-examination of a witness.'' 48 FR 44,765 (1983). During subsequent rule changes, certain language was inadvertently deleted; those deletions are hereby restored.

Costs for Obtaining Commission Records, The Public Record, Disclosure Requests, and Privacy Act Rules

Pertinent subsections of Rules 4.8, 4.9, 4.11, and 4.13 are being amended to change the title of the official designated by the General Counsel to receive and process initial Freedom of Information Act (FOIA) and Privacy Act requests. Currently, these rules contain numerous references to the title ''the Assistant General Counsel for Legal Counsel (Management & Access).'' This title no longer exists. Therefore, the references to this title in Rules 4.8, 4.9, 4.11, and 4.13 are being removed and replaced in most instances by the descriptive phrase: ''the deciding official (as designated by the General Counsel).'' This formulation is being adopted because titles within the Office of the General Counsel may change, and this amendment will reduce the need for future rule changes.

The Administrative Procedure Act does not require prior public notice and comment on these amendments because they relate solely to rules of agency organization, procedure or practice. 5 U.S.C. 553(b)(A). For this reason, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis. See 5 U.S.C. 603, 604. To the extent these amendments may relate to agency information collection activities, they are exempt from review under the Paperwork Reduction Act. *See* 44 U.S.C. 3518(c); 5 CFR 1320.4 (collections during the conduct of civil or administrative proceedings or investigations).

List of Subjects

16 CFR Part 3

Administrative practice and procedure, Claims, Equal Access to Justice, Lawyers.

16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A, of the Code of Federal Regulations, as follows:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

1. The authority citation for Part 3 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

2. Revise § 3.25(c)to read as follows:

§ 3.25 Consent agreement settlements.

* * * * *

(c) If the proposed consent agreement accompanying the motion has also been executed by complaint counsel and approved by the appropriate Bureau Director, the Secretary shall issue an order withdrawing from adjudication those portions of the matter that the proposal would resolve and all proceedings before the Administrative Law Judge shall be stayed with respect to such portions, pending a determination by the Commission pursuant to paragraph (f) of this section.

* * * * *

3. In § 3.39, paragraphs (a) introductory text, (a)(1) and the first sentence of paragraph (a)(2) are revised to read as follows:

§ 3.39 Orders requiring witnesses to testify or provide other information and granting immunity.

(a) Where Commission complaint counsel desire the issuance of an order requiring a witness or deponent to testify or provide other information and granting immunity under title 18, section 6002, United States Code, Directors and Assistant Directors of Bureaus and Regional Directors and Assistant Regional Directors of Commission Regional Offices who supervise complaint counsel responsible for presenting evidence in support of the complaint are authorized to determine:

(1) That the testimony or other information sought from a witness or deponent, or prospective witness or deponent, may be necessary to the public interest, and

(2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of his privilege against self-incrimination; and to request, through the Commission's liaison officer, approval by the Attorney General for the issuance of such order.

* * *

* * * * *

PART 4—MISCELLANEOUS RULES

4. The authority citation for Part 4 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

5. Revise § 4.1 (a)(2)(ii) to read as follows:

§ 4.1 Appearances.

(a)* * *

(2)* * *

(ii) At the request of counsel representing any party in an adjudicative proceeding, the Administrative Law Judge may permit an expert in the same discipline as an expert witness to conduct all or a

portion of the cross-examination of such witness.

* * * * *

§§ 4.8, 4.11, 4.13 [Amended]

6. Section 4.11(a)(2) is corrected as follows:

A. By correctly designating paragraphs (a)(2)(i)(A)(1) through (3) as paragraphs (a)(2)(i)(A)(*1*) through (*3*);

B. By correctly designating paragraphs (a)(2)(ii)(A)(1) and (2) as paragraphs (a)(2)(ii)(A)(*1* and (*2*);

C. By correcting the reference in redesignated paragraph (a)(2)(i)(A)(*1*) that currently reads ''(a)(2)(i)(A)(2)'' to read ''(a)(2)(i)(A)(*2*)'.

7. §§ 4.8, 4.11, and 4.13 are amended by removing the words ''Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee'' and adding, in their place, the words ''deciding official (as designated by the General Counsel)'' in the following places:

a. Section 4.8 (c), (e), (g), and (h);

b. Section 4.11(a) (1) (i) (E); 4.11 (a) (1) (iii) (A)-(D); 4.11(a) (1) (iv) (A)-(C); 4.11 (a) (2) (i) (A) (*1*); and

§§ 4.9 and 4.13 [Amended]

8. §§ 4.9 and 4.13 are amended by removing the words ''Assistant General Counsel for Legal Counsel (Management & Access)'' and adding, in their place, the words ''the deciding official (as designated by the General Counsel)'' in the following places:

a. Section 4.9 (a) (4) (i); and

b. Section 4.13 (i) (2) (i).

§§ 4.11 and 4.13 [Amended]

9. §§ 4.11 and 4.13 are amended by removing the words ''Assistant General Counsel for Legal Counsel (Management & Access)'' in the following places:

a. Section 4.11(a) (1) (i) (A); and

d. Section 4.13 (c).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–30441 Filed 12–11–01; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–188]

RIN 2115–AA97

Safety and Security Zones: High Interest Vessel Transits, Narragansett Bay, Providence River, and Taunton River, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety and security zones around high interest vessels operating in the Providence, Rhode Island Captain of the Port Zone. The safety and security zones are needed to safeguard the public, high interest vessels and their crews, and other vessels and their crews, and the Port of Providence, Rhode Island from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into these zones is prohibited unless authorized by the Captain of the Port, Providence, Rhode Island, or authorized representative. The Coast Guard will announce via broadcast notice to mariners the times and dates during which the zones will be enforced.

DATES: This rule is effective from October 6, 2001, until June 15, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Marine Safety Office Providence, 20 Risho Avenue, East Providence, Rhode Island between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT David C. Barata at Marine Safety Office Providence, (401) 435–2335.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing an NPRM. On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Due to the highly volatile nature of the high interest vessels covered by this rule and the potential catastrophic impact of an attack on a high interest vessel, this rulemaking is urgently required to prevent possible terrorist strikes against high interest vessels within and adjacent to Rhode Island Sound, Narragansett Bay, and the Providence and Taunton Rivers. The delay inherent in the NPRM process is contrary to the public interest insofar as it would render high interest vessels in Narragansett Bay and the Port of Providence vulnerable to subversive activity, sabotage or terrorist attack.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to prevent possible terrorist attack against high interest vessels, and to protect other vessels, waterfront facilities, the public and the Port of Providence from potential sabotage or other subversive acts, accidents or other causes of a similar nature. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

This zone should have minimal impact on the users of Narragansett Bay and the Providence and Taunton Rivers due to the following reasons: High interest vessel transits are infrequent. While a high interest vessel is at anchor, mariners have ample room to transit around the zones. During transits, most mariners can safely maneuver outside the main shipping channels. Mariners requiring use of the channels will only be restricted from entering the safety and security zones for a maximum of three hours during the transit of a high interest vessel. While moored at a facility, commercial traffic and small recreational traffic will have an opportunity to coordinate movement through the safety and security zones with the Captain of the Port's representative. Notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Background and Purpose

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks are likely. Due to these

heightened security concerns, safety and security zones are prudent for vessels which may be likely targets of terrorist acts. From October 6, 2001 to June 15, 2002, various high interest vessels will be transiting Narragansett Bay en route commercial facilities in the upper Providence River and Taunton River. For purposes of this rulemaking, high interest vessels operating in the Captain of the Port Providence zone include barges or ships carrying liquefied petroleum gas (LPG), liquefied natural gas, chlorine, anhydrous ammonia, or any other cargo deemed to be high interest by the Captain of the Port. Title 33 CFR 165.121 currently provides for safety zones for LPG vessels while at anchor in Rhode Island Sound, while transiting Narragansett Bay and the Providence River, and while LPG vessels are either moored at the Port of Providence LPG facility or at the manifolds connected at the Port of Providence LPG facility. However, in light of the current terrorist threats to national security, this zone is insufficient to protect LPG vessels while anchored in Rhode Island Sound, or while a vessel is transiting or moored in the Port of Providence. Moreover, this rulemaking is necessary to protect other high interest vessels not currently covered by 33 CFR 165.121. This rulemaking will temporarily suspend 33 CFR 165.121 and temporarily add the safety and security zones provided for hereunder as 33 CFR 165.T01–188. These safety and security zones are needed to protect high interest vessels, their crews, and the public, from harmful or subversive acts, accidents or other causes of a similar nature. The safety and security zones have identical boundaries, as follows: (1) All waters of Rhode Island Sound within a one-half mile radius of any high interest vessel while the vessel is anchored within one-half mile of the position Latitude 41°25′ N, Longitude 71°23′ W; (2) all waters of Rhode Island Sound, Narragansett Bay, the Providence and Taunton Rivers two (2) miles ahead and one (1) mile astern and extending 1000 yards on either side of any high interest vessel transiting Narragansett Bay, or the Providence and Taunton Rivers; (3) all waters and land within a 1000-yard radius of any high interest vessel moored at a waterfront facility in the Providence Captain of the Port zone. All persons, other than those approved by the Captain of the Port or authorized representative will be prohibited from entering into the safety and security zones during times in which the zones are enforced. The public will be made aware of dates and times during which the safety and security zones will be enforced through a Broadcast Notice to Mariners made from U.S. Coast Guard Group Woods Hole. These regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The sizes of the zones are the minimum necessary to provide adequate protection for high interest vessels and their crews, other vessels operating in the vicinity of high interest vessels and their crews, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the upper Providence River and Taunton River and pleasure craft engaged in recreational activities and sightseeing. The safety and security zones will prohibit any commercial vessels from meeting or overtaking a high interest vessel in the main ship channel, effectively prohibiting use of the channel. However, the zones will only be effective during the vessel transits, which will last for approximately 3 hours. In addition, vessels are able to safely transit around the zones while a vessel is moored or at anchor in Rhode Island Sound. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting high interest vessels, their crews, and the public.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the main ship channel in Narragansett Bay, Providence River, and the Taunton River at the same time as high interest vessels. The safety and security zones will not have a significant economic impact on a substantial number of small entities for several reasons: Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the safety and security zones to engage in these activities. When a high interest vessel is at anchor, vessel traffic will have ample room to maneuver around the safety and security zones. The outbound or inbound transit of a high interest vessel will last a maximum of three hours. Although this regulation prohibits simultaneous use of the channel, this prohibition is of short duration and marine advisories will be issued prior to transit of a high interest vessel. While a high interest vessel is moored, commercial traffic and small recreational traffic will have an opportunity to coordinate movement through the safety and security zones with the patrol commander. Before the effective period, we will issue maritime advisories widely available to users of the area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have questions concerning its provisions or options for compliance, please call LT David C. Barata, telephone (401) 435–2335. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this action under Executive Order 13132, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, 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.

Environment

The Coast Guard has considered the environmental impact of implementing this temporary rule and concluded that under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket.

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. From October 6, 2001 through June 15, 2002, § 165.121 is temporarily suspended and § 165.T01–188 is temporarily added as follows:

§ 165.T01–188 Safety and Security Zones: High Interest Vessels, Narragansett Bay, Rhode Island.

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

(1) All waters of Rhode Island Sound within a one half mile radius of any high interest vessel while the vessel is anchored within one half mile of the point Latitude 41°25′ N, Longitude 71°23′ W; (2) all waters of Rhode Island Sound, Narragansett Bay, the Providence and Taunton Rivers two (2) miles ahead and one (1) mile astern, and extending 1000 yards on either side of any high interest vessel transiting Narragansett Bay, or the Providence and Taunton Rivers; (3) all waters and land within a 1000-yard radius of any high interest vessel moored at a waterfront facility in the Providence Captain of the Port zone.

(b) *Effective date.* This rule is effective from October 6, 2001, through June 15, 2002.

(c) *Regulations.*

(1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within these zones, including below the surface of the water, during times in which high interest vessels are present and the zones are enforced is prohibited unless authorized by the COTP Providence or authorized representative.

For the purposes of this rule, high interest vessels operating in the Captain of the Port Providence zone include barges or ships carrying liquefied petroleum gas (LPG), liquefied natural gas, chlorine, anhydrous ammonia, or any other cargo deemed to be high interest by the Captain of the Port.

(2) All persons and vessels shall comply with the instructions of the COTP, and the designated on-scene U.S. Coast Guard personnel and any personnel from Federal, state, county, municipal or private agencies designated by the Captain of the Port to assist with the enforcement of these safety and security zones.

(3) The general regulations covering safety and security zones in §§ 165.23 and 165.33, respectively, of this part apply.

Dated: October 6, 2001.

J.D. Stieb,

Captain, U.S. Coast Guard, Acting Captain of the Port.

[FR Doc. 01–30750 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL212–1a; FRL–7098–8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to volatile organic compound (VOC) rules for Formel Industries, Incorporated (Formel). This flexographic printing facility is located in Cook County, Illinois. The Illinois Environmental Protection Agency (IEPA) submitted the revised rules on March 21, 2001 as amendments to its State Implementation Plan (SIP). The revisions consist of an adjusted standard from the Flexographic Printing Rule, 35 IAC 218.401(a), (b), and (c). The Illinois Pollution Control Board (Board) approved this adjusted standard because the Board considers this to be the

Reasonably Achievable Control Technology (RACT) for Formel. The Board concluded that complying with the Flexographic Printing Rule requirements would be either technically infeasible or economically unreasonable for this facility. The EPA concurs with the Board. The adjusted standard requirements include participation in a market-based emissions trading system, daily record keeping, conducting trials of compliant inks, and reviewing alternate control technologies.

DATES: This rule is effective on February 11, 2002, unless the EPA receives relevant adverse written comments by January 11, 2002. If adverse comment is received, the EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Illinois's submittal at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

Table of Contents

I. What is the EPA Approving?
II. What Are the Changes From the Current Rule?
III. What Is the EPA's Analysis of the Supporting Materials?
IV. What Are the Environmental Effects of These Actions?
V. What Rulemaking Actions Are the EPA Taking?
VI. Administrative Requirements.

I. What Is the EPA Approving?

The EPA is approving an adjusted standard from the Flexographic Printing Rule for Formel. Formel is required to comply with the conditions in their adjusted standard. The conditions include participation in the market-based emissions trading system, daily record keeping of inks and VOC content, conducting trials of compliant inks, and reviewing alternate control technologies.

II. What Are the Changes From the Current Rule?

The adjusted standard changes the VOC rule Formel must follow. Formel's facility is located in the metropolitan Chicago severe ozone non-attainment area. Formel, with a permitted VOC emissions limit of 80 tons per year (TPY), is classified as a major source because it can emit more than 25 TPY of VOC. Chicago area flexographic printers classified as major VOC sources are subject to the Flexographic Printing Rule. This rule requires printers to either use compliant inks (low or no VOC content) or use a VOC emissions control device. Limiting VOC emissions will help to reduce ozone because VOC can chemically react in the atmosphere to form ozone.

The adjusted standard given to Formel changes its requirements to complying with a market-based emissions trading system, daily record keeping requirements, and to conduct trials with compliant inks and control devices. The market-based trading system will allow Formel to buy emissions allotments from companies which can reduce their VOC emissions at a lower cost than Formel can. The net VOC emissions of all participants meets the desired reductions.

III. What Is the EPA's Analysis of the Supporting Materials?

Illinois included information on compliant ink trials and control device studies at Formel. The Flexographic Printing Rule requires sources use either compliant inks or use a control device to limit VOC emissions. To evaluate what RACT is for Formel, the first consideration is what options would work? The costs of the options that will work are then estimated. The economic burden on the company is then considered. If the compliance costs of an option are determined to be too high, this option is not considered RACT.

Formel ran trials of printing with compliant inks. They also determined what control technologies would work and their costs. The Illinois Pollution Control Board concluded that the using either compliant inks or a control device would not be RACT for Formel. The EPA agrees with this assessment. Printing on plastic with compliant inks is rather difficult. Low VOC content in Formel's exhaust makes control devices have high operational costs. The adjusted standard requirements are considered RACT by the Board. Similar printers have been granted adjusted standards with comparable requirements.

IV. What Are the Environmental Effects of These Actions?

Formel is located in the Chicago severe ozone non-attainment area. It is permitted to emit up to 80 TPY of VOC. The actual VOC emissions from this facility are about 45–70 TPY. VOC can chemically react to form ozone, so limiting VOC emissions in an ozone non-attainment area is desired. Formel is reducing VOC emissions through participation in a market-based emissions trading program. In this program, Formel buys emission allotments from other participants as an alternative to reducing its emissions. Formel bought 15 allotments in 2000. Each allotment is for 200 pounds of VOC emissions. All participants need to own allotments covering its VOC emissions for the ozone season (May 1 to September 30). The trading program reduces the total VOC emissions from the Chicago area. The total area wide emissions are limited by the number of allotments distributed to participants.

V. What Rulemaking Actions Are the EPA Taking?

The EPA is approving, through direct final rulemaking, revisions to the volatile organic compound rules for Formel Industries, Incorporated of Cook County, Illinois. These revisions are the required compliance with an adjusted standard to the Flexographic Printing Rule. The Illinois Pollution Control Board determined that the adjusted standard is RACT for Formel. The requirements of the adjusted standard include complying with a market-based emissions trading system, daily record keeping, conducting compliant ink trials, and investigation of alternative control devices.

We are publishing this action without a prior proposal because we view these as non-controversial revisions and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that serves as the proposal to approve the SIP revision if adverse written comments are filed. This rule will be effective on February 11, 2002. If the EPA receives an adverse written comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA does not intend to institute a second comment period on this action. Any parties interested in commenting on this action must do so now.

VI. Administrative Requirements

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 11, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 25, 2001.

David A. Ullrich,

Deputy Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(160) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(160) On March 21, 2001, Illinois submitted revisions to volatile organic compound rules for Formel Industries, Incorporated in Cook County, Illinois. The revisions consist of a January 18, 2001 Opinion and Order of the Illinois Pollution Control Board in the Matter of: Petition of Formel Industries, Inc. for an Adjusted Standard from 35 ILL. ADM. CODE 218.401(a),(b) and (c): AS 00–13 (Adjusted Standard Air). This Opinion and Order grants Formel Industries, Incorporated an adjusted standard to the Flexographic Printing Rule. The adjusted standard requirements include participation in a market-based emissions trading system, maintaining daily records, conducting trials of compliant inks, and reviewing alternate control technologies.

(i) Incorporation by reference.

Volatile organic compound emissions limits contained in a January 18, 2001 Opinion and Order of the Illinois Pollution Control Board in the Matter of: Petition of Formel Industries, Inc. for an Adjusted Standard from 35 ILL. ADM. CODE 218.401(a), (b) and (c): AS 00–13 (Adjusted Standard-Air). This Opinion and Order was adopted by the Illinois Pollution Control Board on January 18, 2001. It became effective under State law on January 18, 2001.

[FR Doc. 01–30581 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 0140–1140a; FRL–7116–3]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve the Kansas rule, ''Control of Volatile Organic Compound Emissions (VOC) from Commercial Bakery Ovens

in Johnson and Wyandotte Counties,'' as a revision to the Kansas State Implementation Plan (SIP). This rule restricts VOC emissions from large commercial bakery operations in the Kansas City area. The effect of this approval is to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP.

In addition, EPA is making corrections to the Kansas table of SIP approved rules.

DATES: This direct final rule will be effective February 11, 2002 unless EPA receives adverse comments by January 11, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Lynn M. Slugantz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lynn M. Slugantz at (913) 551–7883.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal Approval Process for a SIP?
What Does Federal Approval of a State Regulation Mean to Me?
What is Being Addressed in This Action?
Have the Requirements for Approval of a SIP Revision Been Met?
What Action is EPA Taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean To Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

A. Kansas Bakery Rule

The Kansas Department of Health and Environment (KDHE) has adopted K.A.R. 28–19–717 to control emission of VOCs from commercial bakery ovens, located within the Kansas portion of the Kansas City Metropolitan Ozone Area (KCMA), specifically Johnson and Wyandotte Counties, that have the potential-to-emit greater than 100 tons of VOCs. KDHE, in a continuing effort to maintain good air quality and to strengthen its SIP, has adopted these control regulations for existing major sources not currently limited by regulations. This rule is projected to reduce emissions of VOCs from affected existing bakery facilities in the Kansas portion of the KCMA by 90 tons per year, based on information provided by the existing source affected by this regulation. The new regulation was adopted by the Kansas Secretary of Health and Environment on November 27, 2000, and became effective December 22, 2000. Today, EPA is taking final action to approve rule K.A.R. 28–19–717, ''Control of Volatile Organic Compound Emissions (VOC) from Commercial Bakery Ovens in Johnson and Wyandotte Counties'', as an amendment to the Kansas SIP.

B. Corrections to a Prior Federal Register Notice

On January 11, 2000 (65 FR 1545), EPA published a direct final rule approving a variety of revisions to the Kansas SIP. In the narrative portion of that rulemaking, we explained the need to remove K.A.R. 28–19–52 because it had been revoked by the State. The opacity-related regulations previously set forth at K.A.R. 28–19–52 are now found at K.A.R. 28–19–650. However, at the end of the notice where EPA listed the amendments to 40 CFR 52.870(c), the EPA-approved Kansas regulations, EPA inadvertently failed to list the removal of ''K.A.R. 28–19–52''. Also, in that same rulemaking, EPA published an incorrect State effective date for K.A.R. 28–19–650. The correct State effective date for K.A.R. 28–19–650 is January 29, 1999. We are making these corrections in this document.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 CAA. 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 CAA. 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 CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 11, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 52

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

Dated: November 28, 2001.

William Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart R—Kansas

2. In § 52.870 the table in paragraph (c) is amended by:

a. Removing the entry ''K.A.R. 28–19–52'' and the heading ''Opacity Restrictions'';

b. Revising the entry for ''K.A.R. 28–19–650'' under the heading ''Open Burning Restrictions''.

c. Adding in numerical order an entry for ''K.A.R. 28–19–717'' with a new table heading, ''Volatile Organic Compound Emissions.''

The revisions and addition read as follows:

§ 52.870 Identification of Plan

* * * * *

(c) * * *

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Comments
* * *	* * *			
	Open Burning Restrictions			
* * *	* * *			
K.A.R. 28–19–650 Emissions Opacity Limits.	1/29/99	1/11/00, 65 FR 1548	New rule. Replaces K.A.R. 28–19–50 and 28–19–52.	
* * *	* * *			
	Volatile Organic Compound Emissions			
K.A.R. 28–19–717	Control of Volatile Organic Compound Emissions (VOC) from Commercial Bakery Ovens in Johnson and Wyandotte Counties.	12/22/00	12/12/01	

* * * * *

[FR Doc. 01–30579 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IA 0144–1144a; FRL–7117–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the state of Iowa's section 111(d) plan for controlling emissions from existing hospital/medical/infectious waste incinerators (HMIWI). The state revised its existing plan to specify certain applicability and compliance dates. Approval of the revised state plan will ensure that it is consistent with the Federal regulations and is Federally enforceable.

DATES: This direct final rule will be effective February 11, 2002 unless EPA receives adverse comments by January 11, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Information regarding this action is presented in the following order:

What is a 111(d) Plan?
What are the Regulatory Requirements for HMIWIs?
Why is This Action Necessary?
What Changes did the State Make to its 111(d) Plan?
What Action are we Taking in This Action?

What Is a 111(d) Plan?

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

What Are the Regulatory Requirements for HMIWIs?

Standards and guidelines for new and existing HMIWIs were promulgated under the authority of sections 111 and 129 of the Clean Air Act on September 15, 1997 (62 FR 48374). These standards are 40 CFR part 60, subpart Ec for new sources, and 40 CFR part 60, subpart Ce for existing sources.

The subpart Ce EG is not a direct Federal regulation but is a ''guideline'' for states to use in regulating existing HMIWIs. The EG requires states to submit for EPA approval a section 111(d) state plan containing air emission regulations and compliance schedules for existing HMIWIs.

Why Is This Action Necessary?

This action will ensure consistency between the state plan and the approved Federal plan, and ensure Federal enforceability of the current state plan.

What Changes Did the State Make to its 111(d) Plan?

We originally approved the state's HMIWI 111(d) plan on June 17, 1999 (64 FR 32425), and it became effective on August 16, 1999.

The state's 111(d) plan requirements for HMIWIs are contained in state rule 23.1(5)''b''. The state rule, which incorporates the requirements of the EG, makes reference in several places to dates which are tied to EPA's approval of the state's 111(d) plan. Since EPA has subsequently approved the state's 111(d) plan, there is now a fixed date for these rule requirements. Consequently, the state has revised its rules to cite a fixed date for these requirements.

In a rule making action which was effective on March 14, 2001, the state revised rule 23.1(5)''b,'' subparagraphs (4), (5), (6), (12), and (13) by deleting the reference to EPA's approval date and inserting the appropriate fixed date. The fixed dates refer to requirements for operator training and qualification requirements, waste management requirements, inspection requirements, and compliance times for facilities planning to retrofit or shut down.

In a second state rule making action for HMIWIs which was effective on July 21, 1999, the state corrected a typographical error in rule 23.1(5)''b'', subparagraph (1), in the definition of the

term ''Hospital/medical/infectious waste incinerator.''

These revisions to the state's HMIWIs 111(d) plan were adopted by the Iowa Environmental Protection Commission and became effective on July 21, 1999 and March 14, 2001, respectively.

What Action Are We Taking in This Action?

We are approving these revisions to the state's HMIWI 111(d) plan. We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This merely approves a state action as meeting Federal requirements and imposes no additional requirements. 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 a state action and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state action relating to a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 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. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 11, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 2, 2001.

William Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

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

Subpart Q—Iowa

2. Section 62.3914 is amended by adding paragraph (d) to read as follows:

§ 62.3914 Identification of plan.

* * * * *

(d) Amended plan for the control of air emissions from hospital/medical/infectious waste incinerators submitted by the Iowa Department of Natural Resources on September 19, 2001. The effective date of the amended plan is February 11, 2002.

[FR Doc. 01–30738 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IA 0143–1143a); FRL–7117–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the state of Iowa's section 111(d) plan for controlling emissions from existing municipal solid waste (MSW) landfills. The state revised its existing plan to incorporate EPA revisions to the MSW landfill emission guideline (EG) and to make other clarifying changes. Approval

of the revised state plan will ensure that it is consistent with the Federal regulations and is Federally enforceable.

DATES: This direct final rule will be effective February 11, 2002 unless EPA receives adverse comments by January 11, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Information regarding this action is presented in the following order:

What is a 111(d) Plan?
What are the Regulatory Requirements for MSW Landfills?
Why is This Action Necessary?
What Changes did the State Make to its 111(d) Plan?
What Action are we Taking in This Action?

What Is a 111(d) Plan?

Section 111(d) of the Clean Air Act (CAA) requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established EGs for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

What Are the Regulatory Requirements for MSW Landfills?

Standards and guidelines for new and existing MSW landfills were promulgated under the authority of sections 111 and 129 of the Clean Air Act on March 12, 1996 (61 FR 9905). These standards are 40 CFR part 60, subpart WWW for new sources, and 40 CFR part 60, subpart Cc for existing sources.

The subpart Cc EG is not a direct Federal regulation but is a ''guideline'' for states to use in regulating existing MSW landfills. The EG requires states to submit for EPA approval a section 111(d) state plan containing air emission regulations and compliance schedules for existing MSW landfills.

Why Is This Action Necessary?

We originally approved the state's MSW landfill 111(d) plan on April 23, 1998 (63 FR 20102). We subsequently revised the Federal EG on June 16, 1998 (63 FR 32743). Consequently, the state revised its 111(d) plan to be consistent with the Federal EG.

What Changes Did the State Make to Its 111(d) Plan?

The state's 111(d) plan requirements for MSW landfills are contained in state rule 23.1(5). The state revised this rule to reference 40 CFR part 60 as amended through November 24, 1998. Therefore, the state has adopted by reference the Federal revisions to the EG that were published on June 16, 1998.

A revision was made to rule 23.1(5)''a'' (2) by adding subparagraph ''3'', which specifies when a landfill source is subject to the Title V permitting requirements.

Additional clarifying revisions were made in rules 23.1(5) ''a'' (3), paragraphs ''1'' and ''2'' and in rule 23.1(5)''a''(6), paragraph ''1''. These revisions clarify when design capacity reports must be submitted, require all calculations used to determine the maximum design capacity to be submitted with the design capacity report, and clarify compliance dates.

These revisions to the state's MSW landfill 111(d) plan were adopted by the Iowa Environmental Protection Commission on May 17, 1999, and became effective on July 21, 1999.

What Action Are We Taking in This Action?

We are approving these revisions to the state's MSW landfill 111(d) plan. We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This merely approves a state action as meeting Federal requirements and imposes no additional requirements. 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 a state action and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state action relating to a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove state submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews state submissions, to use VCS in place of state submissions that otherwise satisfy the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule,

we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 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. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 11, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: December 2, 2001.

William Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

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

Subpart Q—Iowa

2. Section 62.3913 is amended by adding paragraph (d) to read as follows:

§ 62.3913 Identification of plan.

* * * * *

(d) Amended plan for the control of air emissions from municipal solid waste landfills submitted by the Iowa Department of Natural Resources on September 19, 2001. The effective date of the amended plan is February 11, 2002.

[FR Doc. 01–30736 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 99–5045]

RIN 2127–AH11

Federal Motor Vehicle Safety Standards: Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: NHTSA is amending its air brake standard to correct an inconsistency between two provisions concerning emergency brake stops, provide that single-unit truck axles should not be overloaded, clarify the wheel-lock provisions by adding a definition of Atandem axle,'' and to permit the use of roll bars on vehicles undergoing brake testing. This rulemaking was initiated in response to a petition for rulemaking from the Truck Manufacturers Association.

DATES: *Effective Date*: The amendments made in this rule are effective January 11, 2002.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than January 28, 2002.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Joseph Scott, Safety Standards Engineer, Office of Crash Avoidance Standards, Vehicle Dynamics Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–8525, fax (202) 493–2739.

For legal issues: Mr. Otto Matheke, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–2992, fax (202) 366–3820.

SUPPLEMENTARY INFORMATION:

1. Background

Federal Motor Vehicle Safety Standard (Standard) No. 121, *Air brake systems*, specifies performance and equipment requirements for trucks, buses, and trailers equipped with air brake systems to ensure safe braking performance under normal and emergency conditions.

On January 6, 1997, the Truck Manufacturers Association (TMA) submitted a petition for rulemaking to NHTSA requesting that Standard No. 121 be amended. The TMA petition stated that the organization, through a Society of Automotive Engineers (SAE) task force, had reviewed Standard No. 121 in detail. As a result of that evaluation, SAE developed a recommended practice, J1626, *Braking, Stability, and Control Performance Test Procedures for Air-Brake Equipped Trucks (REV APR96)*, to provide a process for verifying vehicle compliance while minimizing test variability. TMA commended NHTSA for its efforts to update and reorganize Standard No. 121, but stated that Standard No. 121 and SAE J1626 should be aligned to improve test efficiency and decrease testing costs to the industry. Contending that aligning Standard No. 121 with SAE J1626 would have no detrimental impact on motor vehicle safety, TMA suggested 10 changes to the standard:

a. *Test sequence*—The first change suggested by TMA involved amending Standard No. 121 to change the braking test sequence. TMA noted that Standard No. 121 currently allows truck tractor braking-in-a-curve tests to be performed in the loaded and unloaded (bobtail) condition on the same surface by permitting the test vehicle to be unloaded between tests. This eliminates the step of moving vehicles from one test site to another and limits the need to water the test track to only a single time. TMA requested that Standard No. 121 be modified to allow unloaded straight line stops and loaded straight line stops immediately following the braking-in-a-curve test. Allowing this, in

TMA's view, would simplify testing and have little impact on the test results as long as the burnish procedure is performed first and final inspection follows all other required tests.

b. *Brake adjustments*—TMA requested that Standard No. 121 be modified to allow brakes to be adjusted using the procedure specified by the vehicle manufacturer at any time during testing other than the burnish procedure. TMA stated that some automatic brake adjusters overadjust during Standard No. 121 testing, but not in normal service. According to TMA, SAE J1626 recognizes this and allows brakes to be adjusted in accordance with the manufacturer's procedure at any time to reduce brake performance variability.

c. *Driveline engagement*—TMA requested that the entire brake test procedure, including the burnish procedure, be conducted with the transmission in neutral or with the clutch disengaged. Standard No. 121 currently provides that tests, but not the burnish procedure, are conducted with the vehicle's transmission in neutral or with the clutch disengaged. This minimizes the effect of engine and driveline drag on stopping distance test results and also relieves the manufacturer of the burden of having to test every engine and driveline package offered on a given chassis. The organization contended that conducting the entire test sequence as well as the burnish procedure with the transmission in neutral or the clutch disengaged would eliminate variability in the burnish and the need to test with numerous combinations of engines and drivelines that are offered with each chassis.

d. *Parking brake test*—TMA requested that Standard No. 121 be modified to allow a service brake application prior to applying and testing the parking brake application and that S5.6.3.1 be amended to provide explicitly that this section's requirements apply to the case in which a single leakage failure occurs in the service brake system after the parking brakes are applied.

e. *Emergency brake effective date*—TMA asked NHTSA to clarify the effective date of emergency brake requirements for trucks and buses. Section S5.7, in TMA's view, does not contain such a schedule for emergency brake requirements. TMA considers that an oversight on the agency's part that should be clarified.

f. *Loaded tractor emergency brake*—TMA requested that the loaded tractor emergency brake test, which contained a requirement that such tests be performed with loaded tractors with unbraked control trailers, be deleted.

g. *Roll bar*—TMA requested that the agency modify Standard No. 121 to permit the use of a roll bar for any vehicle conducting the brake test sequence, including the 60-mile-per-hour (mph) straight-line stops and the 30-mph stops in a curve. TMA asserted that the safety of drivers and technicians is a primary concern during vehicle testing, and that use of a roll bar would protect them in the event of a vehicle rollover.

h. *Axle loading*—TMA requested that S5.3.1.1. of Standard No. 121 be modified to establish the specifications for the loading of the axles of single unit trucks. TMA submitted that the lack of a load limit in the requirements for single trucks could result in testing of these vehicles at a greater weight that the vehicle, or individual axles of the vehicle, were designed to carry.

i. *Wheel lock*—TMA sought clarification of the wheel lock provisions found in S5.1.6.1(b) of Standard No. 121. TMA pointed out that the section provides that ''the wheels of at least one rear axle'' of a truck tractor must be equipped with an antilock brake system (ABS) that directly controls the wheels on that axle. On the other hand, TMA stated that subparagraph S5.3.1(a) places wheel lock restrictions on 2 rear axles, and that S5.3.1(b) allows one of those 2 axles to lock up both of its wheels, but only if it is a tandem axle. TMA contended that these requirements conflicted with each other and gave the example of a 3-axle truck, bus or tractor. If the vehicle had 2 driven rear axles in tandem, known as a 6x4 configuration, the wheels on both sides of one rear axle might lock up during an entire stopping distance test. Conversely, if one of the 2 rear axles were a nonliftable tag or pusher axle, known as a 6x2 arrangement, then neither of the rear axles could lock up on both its wheels. Thus, TMA argued that the 6x4 vehicle needs ABS control on only one of its rear axles, while the 6x2 must have ABS control on both rear axles. TMA therefore requested that the wheel lockup provisions of S5.3.1(a) through (d) be rescinded, and that S5.3.1 be redrafted.

j. *Typographical errors*—Finally, TMA requested that several typographical errors be corrected.

2. Notice of Proposed Rulemaking

On February 3, 1999, the agency published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**. The NPRM announced that the agency was partially denying and partially granting the TMA petition. The petition was denied as to items a through e above. It was granted as to the remaining five items, referenced as f through j. For those items that it granted, the agency proposed several changes to Standard No. 121.

The request to change the braking test sequence to conduct the unloaded straight line stops before the loaded straight lines stops was denied because the current GVWR/LLVW (lightly-loaded vehicle weight) is consistent with the other tests in the overall test sequence. In addition, flat-spotting of tires is minimized when GVWR tests are conducted first. Since not all wheels are required to be ABS-controlled and are therefore permitted to lock up, conducting the LLVW tests first, particularly for the 60-mph stopping distance tests, could result in severe flat-spotting of the tires on the non-ABS-controlled axles. Subsequent vehicle test runs would be difficult with the tires in that condition. We also observed that the TMA proposal would eliminate one loading/unloading sequence for truck tractors, but it would necessitate an additional unloading sequence for single unit trucks and buses.

TMA's request that the agency initiate rulemaking to allow brake adjustments at any time during testing was also denied. As we explained in the NPRM, the potential of automatic brake adjusters to over-adjust brakes during the test sequence does not overcome the agency's other concerns. Manual adjustment of the brakes after each test sequence is inappropriate because it would be less representative of real-world braking conditions. Further, Standard No. 121 already allows some brake adjustment during testing. For example, two manual brake adjustments are allowed, one at the end of the braking-in-a-curve test and the other at the end of the GVWR parking brake test. For single unit trucks and buses, one manual brake adjustment is allowed at the end of the GVWR parking brake test. Accordingly, the agency concluded that the existing provisions for manual brake adjustments during the test sequence sufficiently addressed the potential for brake over-adjustment while preserving a well-defined test procedure.

As indicated in the NPRM, NHTSA also declined to start rulemaking proceedings to change the brake test and burnishing procedure to specify that all burnishing and testing be conducted with the transmission in neutral or the clutch disengaged. As we explained in the NPRM, TMA's request to allow the vehicle's brakes to be burnished with the clutch disengaged or the transmission in neutral would result in a higher temperature burnish similar to

a previously revised burnish procedure. In contrast, the current burnish procedure allows the brakes to reach whatever temperatures they are designed to reach when driven in typical stop-and-go driving. Therefore, any braking system design will be conditioned fairly under this approach. We also noted that while TMA was concerned about the burden of testing every engine and driveline package offered on a given chassis, vehicle manufacturers are not required to and currently do not test every combination of engine and drivetrain that is offered on each vehicle. At the time the NPRM was published, as well as today, the legal requirement is that a manufacturer exercise due care in assuring itself that its vehicle is capable of meeting the performance requirements of applicable standards when tested as prescribed in the standards.

We also denied TMA's request to modify the parking brake requirements to allow full application of the service brake prior to application of the parking brake. TMA did not submit any data comparing the grade holding ability of heavy truck air brakes using a full service application before engaging the parking brake, making it difficult to evaluate their proposal. NHTSA noted that full service brake applications prior to engaging the parking brake could damage brake components. The agency decided to conduct vehicle research to evaluate this issue, but could not clarify the test procedure or revise Standard No. 121 until testing had been completed and data had become available.

Finally, TMA's request that NHTSA clarify the emergency brake requirements for trucks and buses do not become effective until March 1, 1998 was denied on the basis that the request had become moot by the time the NPRM had been issued.

The February 3, 1999 NPRM also outlined those portions of the TMA petition that NHTSA considered to be appropriate for further rulemaking action.

The agency proposed to amend Standard No. 121 to eliminate the fully loaded truck-tractor emergency brake testing requirements of S5.7.3(b), to permit the use of roll bars in brake testing. As noted in the NPRM, permitting the use of roll bars in testing would protect drivers in the event of a rollover during a test. To prevent the overloading of single-unit axles in fully loaded brake tests, the agency proposed to amend S5.3.1.1. To clarify the wheel lock requirements, the agency proposed altering Standard No. 121's definition of ''tandem axle'' that would not include a requirement that all axles in a tandem would be driven. In the agency's view, this definition would resolve potential confusion over the application of ABS requirements for heavy vehicles with three or more axles.

Finally, the agency proposed to correct typographical errors in S6.1.8 and S6.2.5 of Standard No. 121.

3. Comments Received in Response to the NPRM

NHTSA received four comments in response to the NPRM. Comments were submitted by three trade groups, the American Truck Dealers Division of the National Automobile Dealers Association (ATD), the Heavy Duty Brake Manufacturers Council of the Motor Equipment Manufacturer's Association (HDBMC), the Truck Manufacturers Association (TMA), and by one manufacturer, AlliedSignal Truck Brake Systems Company (AlliedSignal). All of the commenters supported, in whole or in part, the series of amendments proposed in the NPRM. HDBMC and AlliedSignal took issue with the agency's decision to deny portions of the original TMA petition for rulemaking.

HDBMC supported the agency's proposed amendments regarding roll bars, wheel lock requirements, and corrections. The organization disagreed with the agency's denial of the remainder of the portions of the TMA petition that would have aligned Standard No. 121 with SAE J–1626. HDBMC stated that the SAE J–1626 is in the final ballot process with completion expected in the second quarter of 1999. They strongly urged the agency to refrain from denying any portion of the TMA petition until the Recommended Practice is finalized by the Society of Automotive Engineers.

AlliedSignal stated that it joined in the comments provided by HDBMC and provided additional comments to supplement that response. AlliedSignal supported the agency's proposed amendments that grant portions of the TMA petition. The company disagreed with the agency's denial of the remaining TMA requests. AlliedSignal urged NHTSA to optimize testing efficiency by giving manufacturers the option of sequencing the unloaded braking-in-a-curve test with the other unloaded tests and, since there are a number of possible test sequences, NHTSA should consider rulemaking to provide manufacturers the opportunity to arrange the testing sequence as they see fit. NHTSA would, however, test in the sequence outlined in the agency's test procedure for FMVSS 121. This, in AlliedSignal's view, ''would allow alternate test sequences to be considered in the test procedure when further data is available, without impacting the safety standard.''

AlliedSignal supported a common industry standard procedure for brake testing and urges NHTSA and SAE to agree upon a common approach to brake adjustment during compliance testing. AlliedSignal stated that the current limited periods of adjustment seem to be generally adequate; however, in the future, as additional information on automatic adjustment and air disc brakes become available, some modifications may be needed. AlliedSignal said that NHTSA must recognize that automatic adjustment devices are designed to operate under normal use conditions on the road, unlike the testing conditions during the compliance testing process. AlliedSignal also stated that the burnish should be conducted either with the transmission in neutral or with the clutch engaged. The company argued that this procedure is more repeatable and yields more consistent data. AlliedSignal contended that during a parking brake 20 percent gradient hold test, the service brake would be used to initially hold the vehicle on the grade, before the parking brake control is applied. The use of anti-compounding devices, as applicable, in the system to protect the brakes from over-stressing, should not be a concern for compliance, but should be at the manufacturer's discretion based upon good design practice. AlliedSignal suggested that since NHTSA is researching the grade holding procedure, it should also evaluate the equivalence of grade holding as an option to the static draw bar pull procedure. AlliedSignal also stated that although it understood that only issues addressed in this NPRM are to be subjects for rulemaking at this time, the company also recommended that NHTSA consider deleting the Trailer Test Rig Figure 1(a) and section S6.1.13(b) from the standard as these pertained to the old test rig.

ATD supported the agency's proposed amendments relating to wheel lock and the definition of tandem axles. TMA indicated that as NHTSA had proposed to delete S5.7.3(b) to properly reflect the earlier deletion of the loaded truck-tractor emergency brake testing requirements, all references to S5.7.3(b) elsewhere in the standard need to be modified or removed. TMA also indicated that as the agency had proposed to allow the use of roll bars in brake testing, the specifications for vehicle weights contained in Table 1, S5.6.2(b) and S5.7.1 should be modified

to allow for the additional weight of the roll bars.

4. Final Rule

NHTSA is adopting the changes proposed in the NPRM, with two minor modifications. The agency notes that these modifications to Standard No. 121 were either supported by the commenters or were not addressed by any of the commenters. As noted in the NPRM, the agency believes that these modifications will eliminate certain inconsistencies in Standard No. 121, simplify the test burdens of manufacturers, and allow for increased safety during brake testing.

Two of the four commenters, AlliedSignal and HDBMC, indicated their opposition to the agency's decision to deny portions of the TMA petition for rulemaking. NHTSA notes that its rationale for denying portions of the TMA petition are contained in the February 3, 1999 NPRM. Neither AlliedSignal or HDBMC submitted any data or test results with their comments that would support any change from the agency's earlier decision to deny portions of the TMA petition. The agency also notes that HDBMC urged NHTSA not to deny any portion of the TMA petition until the SAE finally approved and adopted the most recent revisions to the SAE J–1626 standard. The most recent revisions of the J–1626 standard were approved and adopted by the SAE in June 1999. The final revisions to J–1626 did not, in NHTSA's view, change that voluntary standard to address the concerns voiced by the agency in the NPRM.

One commenter, TMA, suggested several changes to Standard No. 121 that were not part of the agency's proposal. As TMA indicated, these amendments are, however, related to the agency's proposal. Both are conforming amendments.

The first of these is TMA's suggestion that S6.1.14, which specifies requirements for venting brake lines to the atmosphere for the emergency braking test, be amended to delete a reference to S5.7.3(b). As the agency's proposal and the final rule call for the deletion of S5.7.3(b), TMA's suggestion appears to be well founded. The deletion of this reference does not alter the substance of Standard No. 121, the agency's proposal or this final rule but merely reflects the deletion S5.7.3(b). Therefore, NHTSA is adopting TMA's suggested change.

The second modification suggested by TMA is to modify the specifications for allowable vehicle weights contained in steps 2b, 7 and 8 of Table I and Sections 5.6.2(b) and S5.7.1. We note that these sections all set forth the allowable vehicle weights for the different tests to be performed in the test sequence. If these specifications were to remain unmodified, they would conflict with the final rule's adoption of provisions allowing the use of roll bars during testing as no allowance would be available for the added weight of the roll bar. As the final rule states that up to 1000 pounds may be added to allowable vehicle weights to facilitate the use of roll bars, NHTSA considers TMA's comments on this issue to be appropriate. The agency is therefore revising its earlier proposal and amending Table I, S5.6.2 and S5.7.1. to allow an additional 1,000 pounds of weight.

Rulemaking Analyses and Notices

a. Executive Order 12866 and DOT Regulatory Policies and Procedures

This document has not been reviewed under Executive Order 12866, *Regulatory Planning and Review.* NHTSA has analyzed the impact of this rulemaking action and has determined that it is not ''significant'' within the meaning of DOT's regulatory policies and procedures. This action clarifies and amends certain provisions of Federal Motor Vehicle Safety Standard No. 121, *Air brake systems*, to permit the addition of a rollbar on test vehicles when undergoing brake testing, clarify when wheel lockup is permitted when brake testing, provide that single-unit truck axles should not be overloaded when brake testing, and delete an obsolete requirement. The amendments do not impose any additional costs on manufacturers of medium and heavy trucks. Although the installation of roll bars on test vehicles would involve additional costs, that provision is optional to manufacturers who may voluntarily want to install them. Further, even if manufacturers chose to install the bars on their test vehicles, the number of affected vehicles would be very small. Thus, the agency estimates that implementation of this final rule will not result in any increased costs to manufacturers, distributors, or consumers. The agency also notes that the amendments contained in this final rule will, to a limited degree, eliminate and simplify certain requirements of Standard No. 121. These amendments may result in very small cost savings for manufacturers. Accordingly, a full regulatory evaluation was not prepared.

b. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* I hereby certify that this final rule will not have a significant impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). This final rule will primarily affect manufacturers of medium and heavy trucks. The Small Business Administration (SBA) regulation at 13 CFR part 121 defines a small business as a business entity which operates primarily within the United States (13 CFR 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification (SIC) codes. SIC code No. 3711, *Motor Vehicles and Passenger Car Bodies*, prescribes a small business size standard of 1,000 or fewer employees. SIC code No. 3714, *Motor Vehicle Part and Accessories*, prescribes a small business size standard of 750 or fewer employees.

This final rule amends Standard No 121 to permit the addition of a rollbar on test vehicles when undergoing brake testing, clarify when wheel lockup is permitted when brake testing, provide that single-unit truck axles should not be overloaded when brake testing, and delete an obsolete requirement. These amendments were requested by the trade organization that represents the major manufacturers of medium and heavy trucks in the U.S. The amendments do not mandate any increased costs or other burdens on truck manufacturers, most, if not all, of which would not qualify as small businesses under SBA guidelines. Neither does this final rule result in any increased costs for small businesses or consumers. Accordingly, there is no significant impact on small businesses, small organizations, or small governmental units by these amendments. As noted above, the agency also notes that the amendments contained in this final rule will, to a limited degree, eliminate and simplify certain requirements of Standard No. 121. These amendments may result in very small cost savings for manufacturers. For these reasons, the agency has not prepared a regulatory flexibility analysis.

c. Paperwork Reduction Act

NHTSA has analyzed this rule in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511). There are no requirements for information collection associated with this rule.

d. Executive Order 13132 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and

criteria contained in E.O. 13132, and has determined that this rule will not establish policies with federalism implications.

e. Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

f. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and does not have a disproportionate effect on children, who are unlikely to be conducting brake tests on heavy trucks.

g. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, 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 the private sector, of more than $100 million annually. This final rule does not meet the definition of Federal mandate because this rule simply adds a compliance alternative for one year. In no case will annual expenditures exceed the $100 million threshold.

h. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act and has determined that implementation of this rulemaking action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.121 is amended by revising S4 to add a definition of ''tandem axle'' in alphabetical order; by revising S5.3.1.1 (a) through (c), S5.6.2, S5.7.1 and S5.7.3(b); by withdrawing and reserving S5.7.3(c); and by revising S6.1.8, S6.1.14, S6.2.5 and Table I, to read as follows:

§ 571.121 Air brake systems.

* * * * *

S4. *Definitions.*

* * * * *

Tandem axle means a group or set of two or more axles placed in a close arrangement, one behind the other, with the centerlines of adjacent axles not more than 72 inches apart.

* * * * *

S5.3.1.1 * * *

(a) Loaded to its GVWR so that the load on each axle, measured at the tire-ground interface, is most nearly proportional to the axles' respective GAWRs, without exceeding the GAWR of any axle.

(b) In the truck tractor only configuration plus up to 500 lbs. or, at the manufacturer's option, at its unloaded weight plus up to 500 lbs. (including driver and instrumentation) and plus not more than an additional 1,000 lbs. for a roll bar structure on the vehicle, and

(c) At its unloaded vehicle weight (except for truck tractors) plus up to 500 lbs. (including driver and instrumentation) or, at the manufacturer's option, at its unloaded weight plus up to 500 lbs. (including driver and instrumentation) plus not more than an additional 1,000 lbs. for a roll bar structure on the vehicle. If the speed attainable in two miles is less than 60 mph, the vehicle shall stop from a speed in Table II that is four to eight mph less than the speed attainable in two miles.

* * * * *

S5.6.2 *Grade holding.* With all parking brakes applied, the vehicle shall remain stationary facing uphill and facing downhill on a smooth, dry portland cement concrete roadway with a 20-percent grade, both

(a) When loaded to its GVWR, and

(b) At its unloaded vehicle weight plus 1500 pounds (including driver and instrumentation and roll bar).

* * * * *

S5.7.1 *Emergency brake system performance.* When stopped six times for each combination of weight and speed specified in S5.3.1.1, except for a loaded truck tractor with an unbraked control trailer, on a road surface having a PFC of 0.9, with a single failure in the service brake system of a part designed to contain compressed air or brake fluid (except failure of a common valve, manifold, brake fluid housing, or brake chamber housing), the vehicle shall stop at least once in not more than the distance specified in Column 5 of Table II, measured from the point at which movement of the service brake control begins, except that a truck-tractor tested at its unloaded vehicle weight plus up to 1500 pounds shall stop at least once in not more than the distance specified in Column 6 of Table II. The stop shall be made without any part of the vehicle leaving the roadway, and with unlimited wheel lockup permitted at any speed.

* * * * *

S5.7.3 * * *

(b) Be capable of modulating the air in the supply or control line to the trailer by means of the service brake control with a single failure in the towing vehicle service brake system as specified in S5.7.1.

(c) [Reserved]

* * * * *

S6.1.8 For vehicles with parking brake systems not utilizing the service brake friction elements, burnish the friction elements of such systems prior to the parking brake test according to the manufacturer's recommendations. For vehicles with parking brake systems utilizing the service brake friction elements, burnish the brakes as follows: With the transmission in the highest gear appropriate for a speed of 40 mph, make 500 snubs between 40 mph and 20 mph at a deceleration rate of 10 f.p.s.p.s., or at the vehicle's maximum deceleration rate if less than 10 f.p.s.p.s. Except where an adjustment is specified, after each brake application accelerate to 40 mph and maintain that

speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If the vehicle cannot attain a speed of 40 mph in 1 mile, continue to accelerate until the vehicle reaches 40 mph or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. Any automatic pressure limiting valve is in use to limit pressure as designed. The brakes may be adjusted up to three times during the burnish procedure, at intervals specified by the vehicle manufacturer, and may be adjusted at the conclusion of the burnishing, in accordance with the vehicle manufacturer's recommendation.

* * * * *

S6.1.14 In testing the emergency braking system of towing vehicles under S5.7.3(a), the hose(s) is vented to the atmosphere at any time not less than 1 second and not more than 1 minute before the emergency stop begins, while the vehicle is moving at the speed from which the stop is to be made and any manual control for the towing vehicle protection system is in the position to supply air and brake control signals to the vehicle being towed. No brake application is made from the time the line(s) is vented until the emergency stop begins and no manual operation of the parking brake system or towing vehicle protection system occurs from the time the line(s) is vented until the stop is completed.

* * * * *

S6.2.5 The rate of brake drum or disc rotation on a dynamometer corresponding to the rate of rotation on a vehicle at a given speed is calculated by assuming a tire radius equal to the static loaded radius specified by the tire manufacturer.

* * * * *

Table I—Stopping Sequence

1. Burnish.
2. Stops on a peak friction coefficient surface of 0.5:

(a) With the vehicle at gross vehicle weight rating (GVWR), stop the vehicle from 30 mph using the service brake, for a truck tractor with a loaded unbraked control trailer.

(b) With the vehicle at unloaded weight plus up to 1500 lbs., stop the vehicle from 30 mph using the service brake, for a truck tractor.

3. Manual adjustment of the service brakes allowed for truck tractors, within the limits recommended by the vehicle manufacturer.
4. Other stops with vehicle at GVWR:

(a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor with a loaded unbraked control trailer, or for a single-unit vehicle.

(b) 60 mph emergency brake stops on a peak friction coefficient of 0.9, for a single-unit vehicle. Truck tractors are not required to be tested in the loaded condition.

5. Parking brake test with the vehicle loaded to GVWR.
6. Manual adjustment of the service brakes allowed for truck tractors and single-unit vehicles, within the limits recommended by the vehicle manufacturer.
7. Other stops with the vehicle at unloaded weight plus up to 1500 lbs.:

(a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor or for a single-unit vehicle.

(b) 60 mph emergency brake stops on a peak friction coefficient of 0.9, for a truck tractor or for a single-unit vehicle.

8. Parking brake test with the vehicle at unloaded weight plus up to 1500 lbs.
9. Final inspection of service brake system for condition of adjustment.

Issued on December 6, 2001.

Jeffrey W. Runge,

Administrator.

[FR Doc. 01–30636 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 66, No. 239
Wednesday, December 12, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AD76

Debarments and Suspensions of Health Care Providers From the Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations on administrative sanctions of health care providers participating in the Federal Employees Health Benefits Program (FEHBP). The proposed regulations implement the suspension and debarment provisions of section 2 of the Federal Employees Health Care Protection Act of 1998 (Pub. L. 105–266). This statute modified both the substantive and procedural requirements for FEHBP administrative sanctions. These regulations supercede interim regulations issued in 1989 to implement the earlier sanctions legislation that was amended by Pub. L. 105–266. They will promote quicker, more uniform decisionmaking for suspensions and debarments, and will enhance protection against unfit providers for both the FEHBP and the individuals it covers.

DATES: Submit comments on or before February 11, 2002.

ADDRESSES: Send or deliver written comments to David Cope, U.S. Office of Personnel Management, 1900 E Street NW., Room 6400, Washington, DC 20415, or submit comments electronically to *debar@opm.gov.*

FOR FURTHER INFORMATION CONTACT: David Cope, 202–606–2851, FAX 202–606–2153.

SUPPLEMENTARY INFORMATION:

Background

A 1991 GAO report (GGD–91–95, ''Fraud and Abuse: Stronger Controls Needed in Federal Employees Health Benefits Program'') concluded that OPM needed to be more aggressive in dealing with health care provider integrity problems. Among other steps, GAO recommended that the agency take action to implement effective administrative sanctions authorities.

OPM recognized that an appropriate administrative sanctions program for FEHBP would necessitate legislative action to replace earlier sanctions legislation that had proved to be costly and ultimately unworkable. As an interim measure, in May 1993, OPM adopted the Governmentwide Nonprocurement Suspension and Debarment Common Rule (common rule), a standardized regulatory program that permitted the agency to effectuate sanctions issued by other agencies. Under this authority, OPM has debarred from the FEHBP over 18,700 health care providers who had previously been excluded from the Medicare, Medicaid, and other programs under the Social Security Act by the Office of Inspector General (OIG) of the Department of Health and Human Services. The OPM common rule regulations appear at 5 CFR part 970.

While operating under the common rule, OPM developed legislative proposals for health care provider sanctions that were comprehensive (i.e., offering a full range of sanctions authorities) and procedurally efficient, while affording appropriate due process protections to the subjects of sanctions action. Bills containing these authorities were introduced in both the 104th and 105th Congresses, and a version that closely paralleled the OPM proposals was enacted as part of Pub. L. 105–266 on October 19, 1998.

This proposed rule is the first of two planned regulatory issuances that together will implement all of the Pub. L. 105–266 sanctions authorities. We are addressing debarments and suspensions in the first issuance because we expect them to constitute the majority of our sanctions workload. OPM is currently developing a separate regulatory issuance to address the financial sanctions authorities enacted by Pub. L. 105–266, including financial assessments and civil monetary penalties.

Purposes of Administrative Sanctions

Administrative sanctions are civil remedies that agencies impose under their own authority to protect their programs from transactions with untrustworthy individuals or entities and to recover program funds paid improperly or fraudulently. Because administrative sanctions are not considered to be ''punitive,'' they can, and frequently are, imposed in addition to other remedies, such as criminal or civil judicial action.

Virtually every federal agency has some form of sanctions authority. The most common types of administrative sanctions are:

- Debarment—removing an individual or entity from participation in a program for a designated period of time, after a due process proceeding;
- Suspension—removing an individual or entity from program participation on an immediate basis, without prior due process, because he currently poses a threat to the public interest; and
- Financial sanctions—imposing double or treble damages, fines, and monetary assessments or penalties, based on a due process proceeding.

Administrative Sanctions of Health Care Providers

Various studies by the GAO, the Office of the Inspector General (OIG) of the Department of Health and Human Services, and health insurance industry groups have placed the overall rate of provider fraud in the American health care system within a range of 6 to 12 percent of the total dollar value of claims. The OIG of the Office of Personnel Management has recognized for many years that fraud by health care providers poses a significant problem for both the financial integrity of the Federal Employees Health Benefits Program (FEHBP) and the health care interests of the persons who obtain coverage through it.

One of the difficulties in pursuing provider-related fraud within FEHBP has been the inadequacy of the legal remedies available to address the problem, prior to the passage of Pub. L. 105–266. Although the false claims, false statements, and mail fraud statutes are nominally applicable to many instances of health care fraud, in practice they are seldom invoked because of the high burden of proof in criminal cases and the fact that the dollar amounts in question typically do not reach prosecutorial thresholds. In fact, most instances of provider fraud

are not amenable to being handled appropriately within the federal judicial system. However, the Pub. L. 105–266 administrative sanctions authorities, as implemented by the proposed regulation, are specifically designed to address fraudulent or improper conduct by health care providers quickly, efficiently, and cost-effectively.

Transition to Statutory Debarment System

Adoption of this proposed regulation will have the following effect on existing OPM regulations:

- Upon issuance, this rule will replace the 1989 interim final version of 5 CFR part 890, subpart J, which reflected the legislation superseded by Pub. L. 105—266.
- As of the date this regulation goes into effect, OPM will discontinue issuing new debarments under the common rule (5 CFR part 970) in favor of actions under 5 CFR part 890, subpart J. Common rule debarments already in effect will remain so until the exclusions on which they are based are terminated by the originating agency.

Administrative Sanctions Will Not Affect FEHBP Operations

The proposed regulation fully reflects the policy concepts underlying OPM's operation of the FEHBP. The principal objectives of administrative sanctions activities will be to protect the health and safety of covered persons and the integrity of the FEHBP by excluding providers whose conduct indicates that they may pose a threat to either of those interests. Other than terminating the rights of certain providers to receive payment of FEHBP funds, the regulations will not affect the manner or conditions through which health care services are delivered to FEHBP-covered persons, or any other aspect of the provider—patient relationship. There will be no effect on the ability of FEHBP subscribers to select health insurance coverage appropriate to their circumstances. Finally, sanctions imposed under these regulations will apply only to health care providers, and will not affect the contractual relationship between OPM and the FEHBP carriers. As a related matter, OPM is committed to coordinating with other agencies to combat health care fraud and abuse. The proposed rule attempts wherever possible to maintain consistency and cooperation between FEHBP sanctions and the Medicare administrative sanctions program operated by the OIG, Department of Health and Human Services.

Mandatory and Permissive Debarment

Pub. L. 105–266 established two broad categories of debarments, distinguished by their underlying bases and the debarring official's range of discretion in imposing the sanction. Mandatory debarment authorities require OPM to debar providers who, in prior due process proceedings, were found to have committed certain types of violations. This concept has been part of the Medicare administrative sanctions statute for many years. As detailed in § 890.1004 of the proposed rule, grounds for mandatory debarment include conviction of crimes involving (1) fraud or other financial misconduct, (2) abuse of patients, (3) abuse of controlled substances, or (4) obstruction of an investigation of those crimes. Mandatory debarment also applies to providers who have been debarred, suspended, or excluded by another Federal agency.

Permissive debarment authorities cover violations for which the debarring official may exercise discretion to impose or not impose debarment, according to the facts of each case. Pub. L. 105–266 established 12 separate grounds for permissive debarment. Section 1011 of the proposed rule arranges these grounds into four broad categories. The categories are (1) actions involving revocation, suspension, nonrenewal, or surrender of health care licensure; (2) ownership or control of an entity by a debarred provider, or ownership/control by a provider of a debarred entity; (3) false, deceptive, or wrongful claims practices; and (4) refusal to provide information requested by OPM or a FEHBP carrier to determine the validity or amount of a claim.

Length of Debarments

Pub. L. 105–266 and the proposed rule establish a minimum 3-year period of debarment for mandatory debarments based on convictions. The proposed rule also adopts the Medicare practice of using specific aggravating and mitigating factors to determine whether a period of debarment longer than the minimum period should be imposed (see § 890.1008). Mandatory debarments based on another agency's sanction will always be for an indefinite period running concurrently with the sanction on which they are based. Therefore, they are not subject to a specified minimum period or to extension because of aggravating factors.

Unlike mandatory debarments, Pub. L. 105–266 does not specify statutory minimum periods for permissive debarments. However, to foster economical and consistent decisionmaking, §§ 890.1016–890.1021 of the proposed rule recommend periods for permissive debarments that may be increased or decreased, based on factors specified in the statute. In the interests of sound administration, § 890.1015 establishes an overall minimum period of not less than one year for any permissive debarment.

Procedures and Appeals

Pub. L. 105–266, and these proposed regulations, require OPM to implement the findings of prior criminal, civil, or administrative due process proceedings with regard to all categories of mandatory debarments. For permissive debarments, the debarring official may, but is not required to, accept the relevant findings of a prior adjudication at the Federal, State, or local level as satisfying the requisite factual basis for debarment (e.g., a licensure revocation or suspension by a Federal regulatory board).

The subject of a proposed mandatory debarment will receive a 30-day advance notice of the impending debarment and may challenge (''contest'') OPM's action by submitting information and arguments on their behalf (see § 890.1006). If OPM proposes a period of debarment exceeding the 3-year statutory minimum, the provider has the further right to make a personal appearance before the debarring official. The proposed mandatory debarment can be withdrawn only if the basis for it no longer exists, such as a conviction being reversed on appeal, or if the proposed subject is incorrectly identified. No further administrative appeal or reconsideration is available. Mandatory debarments become effective when implemented by OPM and remain in force during all judicial appeals. Sections 890.1009 and 890.1010 of the proposed rule address these procedures.

Permissive debarments (other than those based on prior adjudications) inherently require more extensive adjudication of individual cases than mandatory debarments. However, Pub. L. 105–266 provided an effective method of administering them by establishing specific factors that OPM must consider when deciding whether to impose a permissive debarment. These are enumerated in § 890.1013 of the proposed rule. A provider proposed for debarment on permissive grounds that have been previously adjudicated will receive advance written notice and an opportunity to contest the proposed debarment on essentially the same basis as an individual proposed for debarment on mandatory grounds. These procedures are reflected in

§§ 890.1022–890.1026 of the proposed rule.

When the grounds for a permissive debarment have not previously been determined through a due process adjudication, Pub. L. 105–266 requires that OPM provide an opportunity for a due process hearing to establish the underlying facts. If the debarring official determines that the administrative record contains a *bona fide* dispute about facts material to the debarment, he must request a fact-finding hearing before imposing debarment. If the debarring official decides that there is no genuine and material factual dispute on the record, he may issue a decision without a hearing. Except for debarments based on refusal to provide requested information or false/wrongful claims, the debarment will remain in effect while the hearing and associated procedures are held. The presiding official's findings (whether the hearing is held before or after debarment) are binding on the debarring official. No further administrative appeals are available after the debarring official's final decision. Sections 890.1027–890.1029 of the proposed rule detail the procedural rights of a provider subject to permissive debarment on previously unadjudicated grounds.

Suspension

Suspension is a temporary measure, equivalent in its effect to debarment, i.e., FEHBP funds may not be paid for items or services furnished while a provider is suspended. However, in contrast to a debarment, suspension can be imposed without prior due process, pending the completion of legal or administrative proceedings. Although Pub. L. 105–266 does not address suspension per se, it does confer discretion to make debarments effective immediately, if necessary to protect the health and safety of covered individuals. To exercise this authority systematically, we are proposing in §§ 890.1030–890.1041 to treat suspension as a separate form of sanction. This is also consistent with governmentwide practice under the Uniform Suspension and Debarment Common Rule. Section 890.1031 outlines the bases for taking a suspension action. To suspend a provider, OPM must have reasonable cause to believe that he has committed a violation warranting debarment and adequate evidence that the health and safety of covered individuals, or the integrity of FEHBP funds, would be at risk if a suspension were not issued immediately.

As provided in § 890.1032, the initial period of a suspension may not exceed 12 months. The Department of Justice or a Federal or local prosecutor may request that the suspension be extended for an additional six months. When formal legal or administrative proceedings are initiated during the period of suspension, it may continue indefinitely, pending their completion. If a suspended provider is subsequently debarred, § 890.1034 authorizes the debarring official to account for the period of suspension in determining the period of debarment.

Sections 890.1035–890.1041 provide a reconsideration procedure for suspensions, including the opportunity to make a personal appearance before the suspending official and the right to request a fact-finding proceeding before a presiding official when there is a *bona fide* dispute regarding facts material to the suspension.

Waivers and Exceptions

The proposed rule contains a number of waivers and exceptions that protect the financial and health care interests of persons who obtain their health insurance coverage through the FEHBP. These include provisions that (1) claims will be paid for covered persons who obtain services from a debarred provider without knowledge of his debarment [§ 890.1045]; (2) services furnished by a debarred provider in an emergency situation will be paid under each carrier's emergency coverage provisions [§ 890.1046]; (3) inpatients who were admitted to a debarred institution before its debarment will have continued coverage for inpatient institutional services until they are discharged or transferred, unless OPM determines that their health and safety require an earlier termination of payments [§ 890.1047]; (4) providers who are the sole provider of health care services or the sole source of essential specialized services in a community may apply for a limited waiver of debarment to continue their participation in FEHBP [§ 890.1048]; and (5) covered persons may apply for individual exceptions to permit continued payment of FEHBP funds for services they receive from a debarred provider if equivalent services are not reasonably available to them from a nondebarred provider or if interrupting an ongoing course of treatment by the debarred provider would create a risk to their health [§ 890.1050].

Reinstatement

The proposed rule recognizes two types of reinstatement. First, § 890.1051 implements the provisions of Pub. L. 105–266 authorizing OPM to establish regulations under which debarred providers may be reinstated after expiration of the term of their debarment. The statute makes all such reinstatements permissive on OPM's part and requires the provider to prove that they meet the criteria of § 890.1051(c). The proposed rule requires the debarred provider to apply for reinstatement. The effective date of a provider's reinstatement is to be established by OPM, but it may not occur before the period of debarment expires.

The second type of reinstatement, addressed in § 890.1052, applies when administrative or legal action occurring after the debarment has the effect of retroactively invalidating the basis for the debarment. This will occur, for example, where a conviction or licensure action that was the grounds for our debarment is overturned on appeal. In this case, the provider may qualify for reinstatement before their period of debarment expires. Also included in this category are cases where a provider excluded by another agency is reinstated by that agency, thus removing the basis for debarment. In all of these situations, OPM will reinstate the provider without an application being filed. The effective date of these ''automatic'' reinstatements will reflect the date of the event forming the basis for the reinstatement. Therefore, if an appeals court's reversal of a criminal conviction or licensure revocation has the effect of invalidating the action from its inception, we will normally make the reinstatement retroactive to the beginning date of the debarment. However, in the case of a termination of a sanction imposed by another Federal agency, the effective date of the automatic reinstatement will be the date of the other agency's reinstatement. The table in § 890.1053 provides an additional reference aid on these issues.

Regulatory Flexibility Act

I certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM proposes to amend part 890 of title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403(p), 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

2. Subpart J of part 890 is revised to read as follows:

Subpart J—Administrative Sanctions Imposed Against Health Care Providers

Sec.

General Provisions and Definitions

890.1001 What are the scope and purpose of these regulations?
890.1002 How is this subpart written and organized?
890.1003 What terms in this subpart have specialized meanings?

Mandatory Debarments

890.1004 What are the grounds for mandatory debarments?
890.1005 What is OPM's time limit for initiating a mandatory debarment?
890.1006 How will OPM notify me of my proposed debarment?
890.1007 What is the minimum period of debarment for mandatory debarments?
890.1008 When can the period of a mandatory debarment based on a conviction exceed the statutory minimum period?
890.1009 How may I contest OPM's proposal to debar me under a mandatory debarment authority?
890.1010 How will the debarring official decide my contest?

Permissive Debarments

890.1011 What are the grounds for permissive debarments?
890.1012 What are OPM's time limits for initiating a permissive debarment?
890.1013 How will OPM decide whether to propose a permissive debarment?
890.1014 How will OPM notify me of my proposed debarment under a permissive debarment authority?
890.1015 What are the minimum and maximum periods for permissive debarments?
890.1016 What aggravating and mitigating factors will OPM consider in making a final determination of the period of my debarment?
890.1017 How will OPM determine the period of my debarment based on revocation or suspension of my professional licensure?
890.1018 How will OPM determine the period of debarment for an entity owned or controlled by a sanctioned person?
890.1019 How will OPM determine the period of my debarment based on my ownership or control of a sanctioned entity?
890.1020 How will OPM determine the period of my debarment based on false, wrongful, or deceptive claims?
890.1021 How will OPM determine the period of my debarment based on my failure to provide information needed to resolve claims?
890.1022 How may I contest OPM's proposal to debar me under a permissive debarment authority?
890.1023 What information will the debarring official consider as part of my contest?
890.1024 What standards and burdens of proof apply to my contest?
890.1025 When can the debarring official decide my contest without an additional fact-finding proceeding?
890.1026 How will the debarring official resolve my contest if a fact-finding proceeding is not required?
890.1027 When must the debarring official request a fact-finding proceeding before deciding my contest?
890.1028 How will the presiding official conduct the fact-finding proceeding?
890.1029 How will the debarring official decide my contest after the fact-finding proceeding?

Suspension

890.1030 What is a suspension?
890.1031 Under what circumstances may OPM suspend me?
890.1032 How long will my suspension last?
890.1033 How will OPM notify me of a suspension?
890.1034 If I am debarred after being suspended, will the suspension period count as part of the debarment period?
890.1035 How may I contest OPM's decision to suspend me?
890.1036 What information will the suspending official consider as part of my contest?
890.1037 When can the suspending official decide my contest without arranging an additional fact-finding proceeding?
890.1038 How will the suspending official resolve my contest if he determines that a fact-finding proceeding is not required?
890.1039 Under what circumstances must the suspending official arrange a fact-finding proceeding before deciding my contest?
890.1040 How will the presiding official conduct the fact-finding proceeding?
890.1041 How will the suspending official decide my contest after the fact-finding proceeding is completed?

Effect of Debarment

890.1042 When will my debarment go into effect?
890.1043 How does my debarment affect me?

Notifying Outside Parties About Debarment and Suspension Actions

890.1044 What entities will OPM notify of my debarment or suspension?
890.1045 How will OPM inform persons covered by FEHBP about my debarment or suspension?

Exceptions to the Effect of Debarments

890.1046 How does my debarment affect payments to me for services I furnish in emergency situations?
890.1047 What special rules apply to me as an institutional provider?
890.1048 How may I obtain a waiver of my debarment if I am the sole source of health care services in a community?

Special Exceptions To Protect Covered Persons

890.1049 How will FEHBP carriers handle claims for items or services furnished after a provider's debarment?
890.1050 How may an FEHBP covered individual request an exception to a provider's debarment?

Reinstatement

890.1051 How may I be reinstated when my period of debarment expires?
890.1052 Under what circumstances will OPM reinstate me without my filing an application?
890.1053 Table of procedures and effective dates for reinstatements.
890.1054 What agencies and entities will OPM notify about my reinstatement?
890.1055 How may I contest OPM's decision to deny my reinstatement application?

Civil Monetary Penalties and Financial Assessments [Reserved]

Subpart J—Administrative Sanctions Imposed Against Health Care Providers

General Provisions and Definitions

§ 890.1001 What are the scope and purpose of these regulations?

(a) *Scope.* This subpart implements section 8902a of title 5, United States Code, as amended by Public Law 105–266 (October 19, 1998). It establishes a system of administrative sanctions that OPM may, or in some cases, must apply to health care providers who have committed certain violations. The sanctions include debarment, suspension, civil monetary penalties, and financial assessments.

(b) *Purpose.* OPM will use the authorities in this subpart to protect the health and safety of the persons who obtain their health insurance coverage through the FEHBP and the financial and programmatic integrity of FEHBP transactions.

§ 890.1002 How is this subpart written and organized?

(a) *Plain language format.* We wrote this subpart in a question-and-answer

format to make it easier for the public and health care providers to use. In this format, the questions comprising most section headings are integral parts of the respective sections and subsections, because the reader cannot interpret the answers without the context of the questions. Therefore, each question and answer are a unified whole with regulatory effect. The tables contained in this subpart also have regulatory effect.

(b) *Words connoting OPM and health care providers.* Unless otherwise indicated, the words ''you,'' ''me,'' and ''I'' connote a health care provider(s) and the word ''we'' connotes the Office of Personnel Management.

§ 890.1003 What terms in this subpart have specialized meanings?

The following terms have the meanings shown throughout this subpart:

(a) *Carrier* means an entity responsible for operating a health benefits plan described by section 8903 or section 8903a of title 5, United States Code.

(b) *Community* means a geographically-defined area in which you furnish health care services or supplies and for which you may request a limited waiver of debarment in accordance with this subpart. *Defined service area* has the same meaning as *community.*

(c) *Contest* means your request for the debarring or suspending official to reconsider your proposed sanction, its length, or its amount.

(d) *Control interest* means that:

(1) You have a direct and/or indirect ownership interest of 5 percent or more in an entity;

(2) You own a whole or part interest in a mortgage, deed of trust, note, or other obligation secured by the entity, its property, or its assets, equating to a direct interest of 5 percent or more of the total property or assets of the entity;

(3) You are an officer or director of the entity, if it is organized as a corporation;

(4) You are a partner in the entity, if it is organized as a partnership;

(5) You are a managing employee of the entity, including but not limited to a general manager, business manager, administrator, or other employee who exercises, either directly or through other employees, operational or managerial control over the activities of the entity or a portion of it;

(6) You have substantive control over an entity or a critical influence over the activities of the entity or some portion of it, whether or not you are employed by the entity; or

(7) You act as an agent of the entity.

(e) *Conviction* or *convicted* means the following, without regard to the pendency or outcome of an appeal (other than a judgment of acquittal based on innocence) or request for relief:

(1) A Federal, State, or local court has entered a judgment of conviction against you for a felony or misdemeanor offense;

(2) A Federal, State, or local court has found you guilty of a felony or misdemeanor offense;

(3) A Federal, State, or local court has accepted your plea of guilty, nolo contendere, or the equivalent to a felony or misdemeanor offense; or

(4) You have entered a first offender, diversion, or other program in which a judgment of conviction for a felony or misdemeanor offense has been withheld.

(f) *Covered individual* means an employee, annuitant, family member, or former spouse covered by a health benefits plan described by section 8903 or section 8903a of title 5, United States Code, or an individual eligible under section 8905(d) of title 5, United States Code.

(g) *Debarment* means a decision by the debarring official to prohibit payment of FEHBP funds to you, based on section 8902a (b), (c), or (d) of title 5, United States Code and this subpart.

(h) *Debarring official* means an OPM employee authorized to issue debarments under this subpart.

(i) *FEHBP* means the Federal Employees Health Benefits Program.

(j) *Health care services or supplies* means health care or services and supplies such as diagnosis and treatment; drugs and biologicals; supplies, appliances and equipment; and hospitals or other institutional entities that furnish supplies and services.

(k) *Incarceration* means imprisonment, or any type of confinement with or without supervised release, including but not limited to home detention, community confinement, house arrest, or similar arrangements.

(l) *Limited waiver* means an approval by the debarring official of your request to receive payments of FEHBP funds for items or services rendered in a defined geographical area, notwithstanding your debarment, because you are the sole community provider or sole source of essential specialized services in a community.

(m) *Mandatory debarment* means a debarment based on section 8902a(b) of title 5, United States Code. OPM must debar providers who have committed violations listed in that section.

(n) *Office or OPM* means the United States Office of Personnel Management or the component thereof responsible for conducting the administrative sanctions program described by this subpart.

(o) *Permissive debarment* means a debarment based on sections 8902a(c) or (d) of title 5, United States Code. The debarring official has discretionary authority to debar providers who have committed violations listed in those sections.

(p) *Provider* or *provider of health care services or supplies* means a physician, hospital, or other individual or entity that, directly or indirectly, furnishes health care services or supplies.

(q) *Reinstatement* means a decision by OPM to terminate your debarment and restore your eligibility to receive payment of FEHBP funds.

(r) *Sanction* or *administrative sanction* means any administrative action authorized by section 8902a of Title 5, United States Code, or this subpart, including debarment, suspension, civil monetary penalties, and financial assessments.

(s) *Should know* or *should have known* means that you act(ed) in deliberate ignorance or reckless disregard of the truth or falsity of information. For the purpose of imposing a sanction when the grounds incorporate a ''should know'' standard, no proof of specific intent to defraud is required to determine that you have committed an actionable violation.

(t) *Sole community provider* means that you are the only source of primary medical care within a defined service area.

(u) *Sole source of essential specialized services in a community* means that you are the only source of specialized health care items or services in a defined service area and items or services furnished by a non-specialist cannot be substituted without jeopardizing the health or safety of covered individuals.

(v) *Suspending official* means an OPM employee authorized to issue suspensions under this subpart.

Mandatory Debarments

§ 890.1004 What are the grounds for mandatory debarments?

OPM must debar you if any of the factors listed in paragraph (a) or (b) of this section applies to you.

(a) *Conviction for criminal offenses.* You have been convicted under Federal or State law of a criminal offense relating to:

(1) Fraud, corruption, breach of fiduciary responsibility, or other

financial misconduct in connection with the delivery of a health care service or supply;

(2) Neglect or abuse of patients in connection with the delivery of a health care service or supply;

(3) Interference with or obstruction of an investigation or prosecution of a criminal offense described in paragraph (a)(1) or (a)(2) of this section; or

(4) Unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(b) *Administrative sanction currently in effect.* You are currently debarred, suspended, or otherwise excluded from any Federal procurement or nonprocurement activity, within the meaning of section 2455 of the Federal Acquisition Streamlining Act of 1994.

(c) *Direct involvement with an OPM program unnecessary.* Your conviction of an offense listed in paragraph (a) of this section or your receiving a sanction described in paragraph (b) of this section need not have involved an FEHBP covered individual or transaction, or any other OPM program, in order to serve as a basis for mandatory debarment.

§ 890.1005 What is OPM's time limit for initiating a mandatory debarment?

OPM must issue you written notice of a proposed mandatory debarment within 6 years of the event that forms the basis for the debarment. If the basis for the proposed debarment is a conviction, the notice must be issued within 6 years of the date of the conviction. If the basis is another agency's suspension, debarment, or exclusion, the OPM notice must be issued within 6 years of the effective date of the other agency's action.

§ 890.1006 How will OPM notify me of my proposed debarment?

(a) *Written notice.* We will inform you of your proposed debarment by written notice sent not less than 30 days prior to the proposed effective date.

(b) *Contents of the notice.* The notice will contain the following items of information:

(1) Effective date of your debarment;

(2) Minimum length of your debarment;

(3) Basis for your debarment;

(4) The provisions of law and regulation authorizing OPM to debar you;

(5) Effect of the debarment;

(6) Your right to contest the debarment to the debarring official;

(7) Your right to request that we reduce the period of your debarment, if it exceeds the minimum required by law or this subpart; and

(8) The procedures you must follow to apply for reinstatement at the end of your period of debarment, or to seek a waiver of the debarment on the basis that you are the sole health care provider in a community or the sole source of essential specialized services.

(c) *Methods of sending notice.* We will send the notice of proposed debarment to you by one of the following means:

(1) First class mail or, at our option, express delivery service, to your last known street or post office address;

(2) Facsimile transmission (fax), if you have furnished us a current fax number; or

(3) E-mail, if you have furnished us a current e-mail address.

(d) *Delivery to attorney, agent, or representatives.*

(1) If we are proposing to debar you as an individual, we may send the notice of proposed debarment to you or to any other person you have designated to act on your behalf during debarment proceedings.

(2) If we are proposing to debar an entity, we may send the notice of proposed debarment to any owner, partner, director, officer, registered agent for service of process, attorney, or managing employee.

(e) *Presumed timeframes for receipt of notice.* When we compute deadlines associated with your receipt of notices we send to you, we will apply the timeframes specified in paragraphs (e)(1) through (e)(3) of this section.

(1) We will consider any notice we send by first class mail or express delivery service to your last known street or post office address as having been received by you not later than 5 days after we send it.

(2) We will consider any notice we send by facsimile (fax) transmission to a number that you provided to us as having been received by you when we transmit it.

(3) We will consider any notice we send by e-mail to an e-mail address that you furnished to us as having been received by you when we transmit it to your email service provider.

(f) *Procedures if notice cannot be delivered.*

(1) If we learn that a notice we sent to you was undeliverable as addressed or routed, we will make reasonable efforts to obtain a current and accurate address or to use alternative methods of transmitting the notice to you.

(2) If we are unable to deliver a notice to you after reasonable followup efforts, we will presume that you received it 5 days after the date of our final attempt to send it to you.

§ 890.1007 What is the minimum period of debarment for mandatory debarments?

(a) *Debarment based on a conviction.* The statutory minimum period of debarment for a mandatory debarment based on a conviction is 3 years.

(b) *Debarment based on another agency's action.* A mandatory debarment based on another Federal agency's debarment, suspension, or exclusion remains in effect until the originating agency terminates its sanction.

§ 890.1008 When can the period of a mandatory debarment based on a conviction exceed the statutory minimum period?

(a) *Aggravating factors.* OPM may debar you for longer than the 3-year minimum period if aggravating factors are associated with the basis for your debarment. The factors we consider to be aggravating are as follows:

(1) The FEHBP incurred a financial loss as the result of the acts underlying your conviction, or similar acts that were not adjudicated. In determining whether a financial loss occurred, we will not consider any amounts of restitution you may have paid;

(2) The sentence imposed by the court included incarceration;

(3) The underlying offense(s), or similar acts not adjudicated, occurred repeatedly over a period of time, or there is evidence that you planned the offense(s) in advance;

(4) You have a prior record of criminal, civil, or administrative adjudication of related offenses or similar acts; or

(5) The actions underlying your conviction, or similar acts that were not adjudicated, adversely affected the physical, mental, or financial well-being of one or more covered individuals or other persons.

(b) *Mitigating factors.* If the aggravating factors justify debarring you for longer than 3 years, we will also consider whether mitigating factors may justify reducing your debarment period to not less than 3 years. The only factors that we will consider to be mitigating are as follows:

(1) The conviction(s) on which your debarment is based consist entirely or primarily of misdemeanor offenses;

(2) Court records, including associated sentencing reports, contain an official determination that you had a physical, mental, or emotional condition before or during the commission of the offenses underlying the conviction that reduced your level of culpability; or

(3) Your cooperation with Federal and/or State investigative officials

resulted in criminal convictions, civil recoveries, or administrative actions against other individuals, or served as the basis for identifying program weaknesses.

(c) *Maximum period of debarment.* There is no limit on the maximum period of a mandatory debarment based on a conviction.

§ 890.1009 How may I contest OPM's proposal to debar me under a mandatory debarment authority?

(a) *Contesting the debarment.* Within 30 days after receiving written notice that we intend to debar you under a mandatory debarment authority, you may submit information, documents, and written arguments in opposition to the proposed debarment. Our notice will give you specific information about where and how to submit this material. If you do not file a timely contest, your debarment will become effective as stated in the notice, without further action by OPM.

(b) Requesting a reduction of the debarment period. If we propose to debar you for a period longer than the 3-year minimum required by § 890.1007(a), you may request us to reduce the debarment period to not less than 3 years. You may make this request even if you are not contesting the debarment itself. In addition to providing written material, you may appear before the debarring official personally or through a representative to present oral arguments in support of your contest. Our notice will give you specific information about arranging an in-person presentation.

§ 890.1010 How will the debarring official decide my contest?

(a) *Prior adjudication is dispositive.* Evidence indicating that you were the subject of a prior adjudication of a type described in § 890.1004 fully satisfies the standard of proof for a mandatory debarment.

(b) *Debarring official's decision.* The debarring official will issue a written decision, based on all the information in the administrative record, within 30 days after the administrative record is complete. This decision period may be extended for good cause.

(c) *No further administrative proceedings.* The debarring official's decisions regarding mandatory debarment and the period of your debarment are final and are not subject to further administrative review.

Permissive Debarments

§ 890.1011 What are the grounds for permissive debarments?

(a) *Licensure actions.* We may debar you if either paragraph (a)(1) or (a)(2) of this section applies to you. We may take this action even if you retain current and valid professional licensure in another State(s).

(1) A State licensing authority revokes, suspends, restricts, or declines to renew your license to provide health care items or services for reasons related to your professional competence, professional performance, or financial integrity; or

(2) You surrender your license to provide health care items or services while a formal disciplinary proceeding concerning your professional competence, professional performance, or your financial integrity is pending before a State licensing authority.

(b) *Ownership or control interests.*

(1) We may debar a health care provider that is an entity because a person who holds an ownership or control interest of 5 percent or more in the entity has been:

(i) Convicted of a criminal offense listed in § 890.1003(a) as a basis for debarment;

(ii) Debarred under this subpart from participating in the FEHBP; or

(iii) Assessed with a civil monetary penalty under section 8902a of title 5, United States Code and this subpart.

(2) We may debar you as an individual if both paragraphs (b)(2)(i) and (b)(2)(ii) of this section apply to you.

(i) You have an ownership or control interest in an entity that has been:

(A) Convicted of a criminal offense listed in § 890.1004(a) as a basis for debarment;

(B) Debarred under this subpart from participating in the FEHBP; or

(C) Assessed with a civil monetary penalty under section 8902a of title 5, United States Code and this subpart; and

(ii) You know or should know of the actions underlying the entity's conviction, debarment, or civil monetary penalty.

(c) *False, deceptive, or wrongful claims practices.* We may debar you if, in connection with a claim or claims submitted to a FEHBP carrier, you commit any of the following violations:

(1) You charge for health care items or services in an amount substantially in excess of your customary charges for those items or services;

(2) You charge for health care items or services that are substantially in excess of the needs of the covered individual to whom they are furnished;

(3) You charge for health care items or services whose quality fails to meet professionally recognized standards for items or services of that type;

(4) You charge for health care items or services that you knew or should have known were not furnished to the covered individual as claimed;

(5) You knowingly make, or cause to be made, a false statement or misrepresentation of a material fact reflected in a claim;

(6) You charge for items or services that you knew or should have known were furnished while you were debarred from participation in the FEHBP under this subpart; or

(7) You charge for items and services that you knew or should have known are in violation of the applicable charge limitations of section 8904(b) of title 5, United States Code.

(d) *Failure to furnish required information.* We may debar you if you knowingly fail to provide any information requested by a FEHBP carrier or OPM to determine:

(1) Whether a payment or reimbursement is properly payable; or

(2) The proper amount of payment or reimbursement that may be due.

§ 890.1012 What are OPM's time limits for initiating a permissive debarment?

(a) *Licensure cases.* If the basis for your proposed debarment is a licensure action, we must issue you a notice of proposed debarment within 6 years of the effective date on which a State licensing authority revoked, suspended, restricted, or declined to renew your license, or the date on which you surrendered your license to the State authority.

(b) *Ownership or control.* If the basis for the proposed debarment is ownership or control of an entity by a sanctioned person, or ownership or control of a sanctioned entity by a person who knew or should have known of the basis for the entity's sanction, we must issue a notice of proposed debarment within 6 years of the effective date of the sanction on which the proposed debarment is based.

(c) *False, deceptive, or wrongful claims practices.* If the basis for your proposed debarment involves a claim filed with a FEHBP carrier, we must issue you a notice of proposed debarment within 6 years of the date you presented the claim for payment to the covered person's FEHBP carrier.

(d) *Failure to furnish requested information.* If the basis for your proposed debarment involves your failure to furnish information requested by an FEHBP carrier or OPM, we must issue you a notice of proposed

debarment within 6 years of the date on which the carrier or OPM requested you to furnish the information in question.

§ 890.1013 How will OPM decide whether to propose a permissive debarment?

(a) *Review factors.* We will consider the factors listed in paragraphs (a)(1) through (a)(4) of this section in deciding whether to propose your debarment under a permissive debarment authority. The absence of a factor will be considered neutral; that is, it will have no effect on our decision.

(1) The nature of any claims involved in the basis for your proposed debarment and the circumstances under which they were presented to FEHBP carriers;

(2) The improper conduct involved in the basis for your proposed debarment, your degree of culpability, and your history of prior offenses;

(3) The extent to which you pose or may pose a risk to the health and safety of FEHBP-covered individuals or to the integrity of FEHBP transactions; and

(4) Other factors specifically relevant to your debarment that must be considered in the interests of fairness.

(b) *Specialized review in certain cases.* In determining whether to propose debarment under § 890.1011(c)(2), providing items or services substantially in excess of the needs of a covered individual, or § 890.1011(c)(3), providing items or services that fail to meet professionally-recognized quality standards, we will obtain the input of trained reviewers, based on written medical protocols developed by physicians. If we cannot reach a decision on this basis, we will consult with a physician in an appropriate specialty area.

§ 890.1014 How will OPM notify me of my proposed debarment under a permissive debarment authority?

We will apply the provisions of § 890.1006 to notify you of your proposed permissive debarment.

§ 890.1015 What are the minimum and maximum periods for permissive debarments?

We will not issue a permissive debarment for a period of less than one year, unless we specifically determine that a shorter period is in the interests of the FEHBP and its covered individuals. There is no limit on the maximum period of a permissive debarment.

§ 890.1016 What aggravating and mitigating factors will OPM consider in making a final determination of the period of my debarment?

(a) *Aggravating factors.* We will consider the presence of any of the factors listed in paragraphs (a)(1) through (a)(5) of this section, to represent aggravating circumstances that may support increasing the length of a debarment beyond the periods specified in §§ 890.1016 through 890.1021, respectively. The absence of a factor will have no effect either to increase or lower the nominal period of debarment.

(1) Your actions underlying the basis for the debarment, or similar acts, had an adverse impact on the physical or mental health or well-being of one or more FEHBP-covered individuals or other persons.

(2) You have a documented history of prior criminal wrongdoing; civil violations related to health care items or services; improper conduct; or administrative violations addressed by a Federal or State agency. We will consider matters involving violence, patient abuse, drug abuse, or controlled substances convictions or violations to be particularly serious.

(3) Your actions underlying the basis for the debarment, or similar acts, resulted in financial loss to the FEHBP, FEHBP-covered individuals, or other persons. In determining whether, or to what extent, a financial loss occurred, we will not consider any amounts of restitution you may have paid.

(4) You filed false, wrongful, or improper claims to FEHBP carriers that were numerous, submitted over a prolonged period of time, part of an on-going pattern of wrongful acts, or of which you were specifically aware or directly responsible.

(5) You attempted to obstruct, hinder, or impede official inquiries into the wrongful conduct underlying your debarment.

(b) *Mitigating factors.* The presence of either of the factors identified in paragraphs (b)(1) or (b)(2) of this section may support shortening your period of debarment to not less than one year. Their absence will have no effect to either raise or lower the period of debarment.

(1) Your cooperation with Federal, State, or local authorities resulted in criminal convictions, civil recoveries, or administrative actions against other violators, or served as the basis for official determinations of program weaknesses or vulnerabilities; and

(2) Official records of judicial proceedings or the proceedings of State licensing authorities contain a formal determination that you had a physical, mental, or emotional condition that reduced your level of culpability before or during the period in which you committed the violations in question.

§ 890.1017 How will OPM determine the period of my debarment based on revocation or suspension of my professional licensure?

(a) *Indefinite term of debarment.* Subject to the exceptions in paragraph (b) of this section, your debarment under § 890.1011(a) will be for an indefinite period coinciding with the period during which your license is revoked, suspended, restricted, surrendered, or otherwise not in effect in the State whose action against your license formed the basis for our debarment.

(b) *Aggravating circumstances.* If any of the aggravating circumstances in § 890.1016 apply to you, we may debar you for a stated period beyond the duration of your licensure revocation or suspension.

§ 890.1018 How will OPM determine the period of debarment for an entity owned or controlled by a sanctioned person?

We will determine the length of debarments issued under § 890.1011(b)(1) as described in paragraphs (a) through (c) of this section.

(a) *Concurrent with owner/controller's debarment.* The debarment of an entity based on debarment of an individual with an ownership or control interest will be for a period concurrent with the individual's debarment. If any aggravating or mitigating circumstances identified in § 890.1016 apply to the entity itself and were not considered in setting the period of the individual's debarment, we may debar the entity for a period longer or shorter than the individual's debarment.

(b) *Debarment based on owner/controller's conviction.* The debarment of an entity based on the criminal conviction of a person with an ownership or control interest for an offense listed in § 890.1004(a)(1) through (a)(4), will be for a period of no less than 3 years, subject to adjustment for any aggravating or mitigating circumstances identified in § 890.1016 that apply to the entity itself.

(c) *Debarment based on owner/controller's civil monetary penalty.* The debarment of an entity based on a civil monetary penalty imposed on a person with an ownership or control interest, will be for a period of no less than 3 years, subject to adjustment for any aggravating or mitigating circumstances identified in § 890.1016 that apply to the entity itself.

§ 890.1019 How will OPM determine the period of my debarment based on my ownership or control of a sanctioned entity?

We will determine the period of a debarment issued under § 890.1011(b)(2) as described in paragraphs (a) through (c) of this section.

(a) *Concurrent with entity's debarment.* If your debarment is based on your ownership or control of a debarred entity, we may debar you for a period concurrent with the entity's debarment. If any of the aggravating or mitigating circumstances identified in § 890.1016 applies to you personally and was not considered in setting the period of the entity's debarment, we may debar you for a period longer or shorter than the entity's debarment.

(b) *Debarment based on conviction of entity.* If your debarment is based on the criminal conviction of an entity you own or control for an offense listed in § 890.1004(a)(1) through (a)(4), we will debar you for a period of no less than 3 years, subject to adjustment for any aggravating or mitigating circumstances identified in § 890.1016 that apply to you as an individual.

(c) *Debarment based on civil monetary penalty against entity.* If your debarment is based on a civil monetary penalty imposed on an entity you own or control, we will debar you for 3 years, subject to adjustment on the basis of the aggravating and mitigating circumstances listed in § 890.1016 that apply to you as an individual.

§ 890.1020 How will OPM determine the period of my debarment based on false, wrongful, or deceptive claims?

Debarments under § 890.1011(c) will be for a period of 3 years, subject to adjustment based on the aggravating and mitigating factors listed in § 890.1016.

§ 890.1021 How will OPM determine the period of my debarment based on my failure to provide information needed to resolve claims?

Debarments under § 890.1011(d) will be for a period of 3 years, subject to adjustment based on the aggravating and mitigating factors listed in § 890.1016.

§ 890.1022 How may I contest OPM's proposal to debar me under a permissive debarment authority?

(a) *Right to contest your proposed debarment.* You may challenge a proposed debarment by filing a written contest with the debarring official during the 30-day notice period. If you do not file a timely contest, the debarment will become effective as stated in the notice, without further action by OPM.

(b) *Challenging the length of your proposed debarment.* You may contest the length of the proposed debarment, even if you are not challenging the debarment itself, or you may challenge both the length of a debarment and the debarment itself in the same contest. However, issues involving the length of a debarment are not subject to a fact-finding hearing under § 890.1028.

§ 890.1023 What information will the debarring official consider as part of my contest?

(a) *Documents and oral and written arguments.* You may submit documents and written arguments in opposition to the proposed debarment and/or its length, and you may appear personally or through a representative before the debarring official to provide any other information you believe to be relevant.

(b) *Specific factual basis for contesting the proposed debarment.* You must identify the specific facts that contradict the basis for your proposed debarment as stated in your notice of proposed debarment. A general or unsupported denial that the basis for debarment applies to you does not raise a genuine dispute over facts material to the debarment, and the debarring official will not give it any probative weight.

(c) *Mandatory disclosures.* In addition to any other information that you submit during the contest, you must inform the debarring official of any of the matters in paragraphs (c)(1) through (c)(3) of this section, that applies to you. If you fail to provide applicable information, OPM may initiate further legal or administrative action against you.

(1) Any existing, proposed, or prior exclusion, debarment, penalty, or other sanction imposed on you by a Federal, State, or local government agency, including any administrative agreement that purports to affect only a single agency;

(2) Any criminal or civil legal proceeding not referenced in the notice of proposed debarment that arose from facts relevant to the basis for debarment stated in the notice; and

(3) Any entity in which you have a control interest, as that term is defined in § 890.1003(d).

§ 890.1024 What standards and burdens of proof apply to my contest?

(a) *Preponderance of evidence.* OPM must prove by a preponderance of the evidence that you have committed a sanctionable violation.

(b) *Demonstrating basis for not imposing debarment.* If OPM establishes an evidentiary basis for your debarment, you have the burden of demonstrating that you are presently responsible to participate in FEHBP and that debarment is not necessary to protect the interests of the program and its covered individuals.

§ 890.1025 When can the debarring official decide my contest without an additional fact-finding proceeding?

A fact-finding proceeding in addition to your presentation of arguments, documents, and information to the debarring official is not required in the following circumstances:

(a) *Previously adjudicated facts.* Your proposed debarment is based on facts determined in a prior due process adjudication. Examples of prior due process proceedings include, but are not limited to, the adjudication procedures associated with:

(1) Licensure revocation, suspension, restriction, or nonrenewal by a State licensing authority;

(2) Debarment, exclusion, suspension, civil monetary penalties, or similar legal or administrative adjudications by Federal, State, or local agencies;

(3) A criminal conviction or civil judgment; or

(4) An action on your part that constitutes a waiver of your right to a due process adjudication, such as surrender of your professional license during the pendency of a disciplinary hearing, entering a guilty plea or confession of judgment in a judicial proceeding, or entering a settlement agreement to resolve or forestall a civil, criminal, or administrative action.

(b) *No dispute of material facts.* Your contest does not identify a *bona fide* dispute concerning facts material to the basis for your proposed debarment.

§ 890.1026 How will the debarring official resolve my contest if a fact-finding proceeding is not required?

(a) *Debarring official's procedures.* If the debarring official determines that a fact-finding proceeding is not required, you will receive the final decision on your contest within 30 days after the record closes for submitting evidence, arguments, and information as part of your contest. The debarring official may extend this timeframe for good cause.

(b) *No further administrative review available.* There are no further administrative proceedings after the presiding official's final decision. If you are adversely affected by the decision, you may appeal to the appropriate United States District Court under section 8902a(h)(2) of title 5, United States Code.

§ 890.1027 When must the debarring official request a fact-finding proceeding before deciding my contest?

(a) *Criteria for holding fact-finding proceeding.* The debarring official must request another OPM official (''presiding official'') to hold a fact-finding proceeding if both paragraphs (a)(1) and (a)(2) of this section apply.

(1) Facts material to your proposed debarment have not been adjudicated in a prior due process proceeding; and

(2) These facts are genuinely in dispute, based on the entire administrative record available to the debarring official.

(b) *Qualification to serve as presiding official.* The presiding official is designated by the OPM Director or another OPM official authorized by the Director to make such designations. The presiding official will be a senior official who is able to conduct informal adjudicative processes. He will have had no previous contact with your proposed debarment or the contest.

(c) *Effect on contest.* The debarring official must defer his decision on your contest pending the results of the fact-finding proceeding.

§ 890.1028 How will the presiding official conduct the fact-finding proceeding?

(a) *Informal proceeding.* The presiding official will conduct the fact-finding proceedings as informally as practicable, consistent with principles of fundamental fairness. Formal rules of evidence or procedure do not apply to these proceedings.

(b) *Proceeding limited to disputed material facts.* The presiding official can consider only the genuinely disputed facts identified by the debarring official as relevant to the basis for your debarment. Matters previously adjudicated or about which there is no *bona fide* dispute on the record are outside the presiding official's jurisdiction.

(c) *Right to present information, evidence, and arguments.* You may appear before the presiding official with your counsel, submit oral and written arguments and documentary evidence, present witnesses on your behalf, question any witnesses testifying in support of your suspension, and challenge the accuracy of any other evidence that the agency offers as a basis for your suspension.

(d) *Record of proceedings.* The presiding official will make an audio recording of the proceedings before him. If you wish to have a transcribed record, you may purchase it.

(e) *Presiding official's findings.* The presiding official will determine all of the disputed facts identified by the debarring official, on the basis of a preponderance of the evidence in the entire administrative record. Within 30 days after the record of the proceeding closes, the presiding official must issue a written report of all findings of fact to the debarring official.

§ 890.1029 How will the debarring official decide my contest after the fact-finding proceeding?

(a) *Findings must be accepted.* The debarring official must accept the presiding official's findings of fact, unless they are arbitrary, capricious, or clearly erroneous. In such a case, the debarring official must remand the material facts to the presiding official for additional proceedings in accordance with § 890.1028.

(b) *Timeframe for final decision.* The debarring official will issue a final written decision on your contest within 30 days after receiving the presiding official's findings. The debarring official may extend this decision period for good cause.

(c) *Debarring official's final decision.*

(1) The debarring official must observe the evidentiary standards and burdens of proof stated in § 890.1024 in reaching a final decision to debar.

(2) In any case where the final decision is to debar, the debarring official has the discretion to set the period of debarment, subject to the factors identified in §§ 890.1015 through 890.1021.

(3) The debarring official has the discretion to decide not to impose debarment in any case involving a permissive debarment authority.

(e) *No further administrative proceedings.* If you are adversely affected by the debarring official's final decision, you may appeal to the appropriate United States District Court under section 8902a(h)(2) of title 5, United States Code.

Suspension

§ 890.1030 What is a suspension?

(a) *Temporary action pending formal proceedings.* Suspension is a temporary action pending completion of an investigation or ensuing criminal, civil, or administrative proceedings.

(b) *Immediate effect.* Suspension is effective immediately upon the suspending official's decision, without prior notice to you.

(c) *Effect equivalent to debarment.* The effect of a suspension is the same as the effect of a debarment. You may not receive payment from FEHBP funds for items or services you furnish to covered individuals during the period of your suspension.

§ 890.1031 Under what circumstances may OPM suspend me?

(a) *Basis for suspension.* We may suspend you if both paragraphs (a)(1) and (a)(2) of this section apply.

(1) We obtain reliable evidence indicating that one of the grounds for suspension listed in paragraph (b) of this section applies to you; and

(2) The suspending official determines under paragraph (c) of this section that immediate action to suspend you is necessary to protect the public interest.

(b) *Grounds for suspension.* Evidence of any of the following situations may constitute grounds for a suspension:

(1) You are indicted for or convicted of a criminal offense that is a basis for mandatory debarment under this subpart;

(2) You are indicted for or convicted of a criminal offense that reflects a risk to the health, safety, or well-being of covered individuals who may obtain health care services or supplies from you; or

(3) OPM obtains credible evidence indicating, in the judgment of the suspending official, that you have committed a violation that would warrant your debarment under this subpart. This evidence may include, but is not limited to:

(i) Civil judgments;

(ii) Notice that a Federal, State, or local government agency has debarred, suspended, or excluded you from participating in its programs or revoked or declined to renew a professional license; or

(iii) Other official findings by Federal, State, or local bodies that determine factual or legal matters.

(c) *Determining need for immediate action.* Suspension is intended to protect the public interest, including the health and safety of covered individuals or the integrity of FEHBP funds. The suspending official has wide discretion to decide whether to suspend you. He does not need to make a specific finding of immediacy or necessity before suspending you, and he may draw reasonable inferences from the nature of the alleged misconduct and from your actual or potential transactions with the FEHBP.

§ 890.1032 How long will my suspension last?

(a) *Initial period.* The suspending official will establish the initial term of all suspensions as an indefinite period not to exceed 12 months.

(b) *Formal legal proceedings not initiated.* If formal legal or administrative proceedings have not begun against you within 12 months

after the effective date of your suspension, the suspending official may:(1) Terminate the suspension; or(2) If requested by the Department of Justice, the cognizant United States Attorney's Office, or other responsible Federal, State, or local prosecuting official, extend the suspension for an additional period, not to exceed 6 months.

(c) *Formal proceedings initiated*. If formal criminal, civil, or administrative proceedings are initiated against you while you are suspended, the suspension may continue indefinitely, pending the outcome of those proceedings.

(d) *Terminating the suspension*. The suspending official may terminate your suspension at any time, and must terminate it after 18 months, unless formal proceedings have begun within that period.

§ 890.1033 How will OPM notify me of a suspension?

(a) *Written notice*. OPM will send you a written notice of suspension under the procedures and methods described in § 890.1006(c)–(e).

(b) *Contents of notice*. The suspension notice will contain the following information:

(1) That you are suspended, effective on the date of the notice;

(2) The initial period of your suspension;

(3) The basis for your suspension;

(4) The provisions of law and regulation authorizing your suspension;

(5) The effect of your suspension; and

(6) Your rights to contest the suspension.

§ 890.1034 If I am debarred after being suspended, will the suspension period count as part of the debarment period?

The debarring official may consider your contiguous period of suspension when determining the length of your debarment.

§ 890.1035 How may I contest OPM's decision to suspend me?

(a) *Filing a contest of the suspension*. You may challenge a suspension by filing a contest, in writing, with the suspending official not later than 30 days after you receive notice of your suspension. The suspension will remain in effect during the contest, unless it is rescinded by the suspending official.

(b) *Informal proceeding*. The suspending official will use informal, flexible procedures to conduct the contest. Formal rules of evidence and procedure do not apply to this proceeding.

§ 890.1036 What information will the suspending official consider as part of my contest?

(a) *Presenting information and arguments to the suspending official*. You may submit documents and written arguments in opposition to the suspension, and you may appear personally, or through a representative, before the suspending official to provide any other information that you believe to be relevant.

(b) *Specific factual basis for contesting the suspension*. You must identify specific facts that contradict the basis for your suspension as stated in the suspension notice. A general denial that the basis for the suspension applies to you will not raise a genuine dispute over facts material to the suspension, and the suspending official will not give it any probative weight.

(c) *Mandatory disclosures*. You must inform the suspending official of any information described in paragraphs (c)(1) through (c)(3) of this section that applies to you:

(1) Any existing, proposed, or prior exclusion, debarment, penalty, or other sanction imposed by a Federal, State, or local government agency, including any administrative agreement that purports to affect only a single agency;

(2) Any criminal or civil proceeding not referenced in the suspension notice that arose from facts relevant to the basis for the suspension stated in the notice; and

(3) Any entity in which you have a control interest, as that term is defined in § 890.1003(d).

§ 890.1037 When can the suspending official decide my contest without arranging an additional fact-finding proceeding?

In the situations described in paragraphs (a) through (c) of this section apply, the suspending official may decide your contest without an additional fact-finding process.

(a) *Previously adjudicated facts*. Your suspension is based on an indictment or on facts determined by a prior adjudication in which you were afforded due process rights. Examples of due process proceedings include, but are not limited to, the adjudication procedures associated with licensure revocation, suspension, restriction, or nonrenewal by a State licensing authority; similar administrative adjudications by Federal, State, or local agencies; a criminal conviction or civil judgment; or an action on your part that constitutes a waiver of your right to a due process adjudication, such as surrender of your professional license during the pendency of a disciplinary hearing, entering a guilty plea or confession of judgment in a judicial proceeding, or entering a settlement agreement to resolve or forestall a civil, criminal, or administrative action. Neither the existence of the prior adjudication nor any of the underlying circumstances are considered to be subject to genuine factual dispute as part of the suspension proceeding.

(b) *Advisory by law enforcement officials*. OPM is advised by the Department of Justice, the cognizant U.S. Attorney, a State attorney general's office, or a State or local prosecutor's office that proceedings before a presiding official would prejudice the substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension.

(c) *No bona fide factual dispute*. The information, arguments, and documents you submit to the suspending official do not establish that there is a *bona fide* factual dispute regarding facts material to your suspension.

§ 890.1038 How will the suspending official resolve my contest if he determines that a fact-finding proceeding is not required?

(a) *Written decision*. The suspending official will issue a written decision on your contest within 30 days after the record closes for submitting evidence, arguments, and information as part of your contest. He may extend this timeframe for good cause.

(b) *No further administrative review available*. The suspending official's decision is final and is not subject to further administrative review.

§ 890.1039 Under what circumstances must the suspending official arrange a fact-finding proceeding before deciding my contest?

(a) *Disputed material facts*. If the suspending official determines that your contest establishes the existence of a *bona fide* factual dispute regarding facts material to the suspension, he must arrange for them to be resolved through a fact-finding process conducted by another OPM official (''presiding official''), unless the restriction of § 890.1037(b) applies.

(b) *Qualification to serve as presiding official*. The presiding official is designated by the OPM Director or another OPM official authorized by the Director to make such designations. He will be a senior official qualified to conduct informal administrative adjudications. The presiding official must have had no previous contact with your suspension or the contest.

(c) *Decision on contest deferred*. The suspending official must defer any

decision on your contest pending the results of the fact-finding process.

§ 890.1040 How will the presiding official conduct the fact-finding proceeding?

(a) *Informal proceeding.* The presiding official will conduct the fact-finding proceedings as informally as practicable, consistent with principles of fundamental fairness. Specific rules of evidence or procedure do not apply to these proceedings.

(b) *Proceeding limited to disputed material facts.* The presiding official can consider only the genuinely disputed facts identified by the suspending official as relevant to the basis for your suspension. Matters previously adjudicated or about which there is no *bona fide* dispute on the record are outside the presiding official's jurisdiction.

(c) *Right to present information, evidence, and arguments.* You may appear before the presiding official with your counsel, submit oral and written arguments and documentary evidence, present witnesses on your behalf, question any witnesses testifying in support of your suspension, and challenge the accuracy of any other evidence that the agency offers as a basis for your suspension.

(d) *Record of proceedings.* The presiding official will make an audio recording of the proceedings before him. If you wish to have a transcribed record, you may purchase it.

(e) *Presiding official's findings.* Within 30 days after the record of the fact-finding proceeding closes, the presiding official will forward to the suspending official a written report of findings that resolves all of the disputed material facts. You will receive a copy of this report simultaneously.

§ 890.1041 How will the suspending official decide my contest after the fact-finding proceeding is completed?

(a) *Presiding official's findings must be accepted.* The suspending official must accept the presiding official's findings, unless they are arbitrary, capricious, or clearly erroneous.

(b) *Suspending official's decision.* Within 30 days after receiving the presiding official's report, the suspending official must issue a final written decision that either sustains, modifies, or terminates the suspension. The suspending official may extend this period for good cause.

(c) *Effect on subsequent debarment or suspension proceedings.* A decision by the suspending official to modify or terminate your suspension will not prevent OPM from subsequently debarring you, or any other Federal agency from either suspending or debarring you, based on the same facts.

Effect of Debarment

§ 890.1042 When will my debarment go into effect?

(a) *Minimum notice period.* Your debarment will take effect no sooner than 30 days after the date of OPM's notice of proposed debarment, unless the debarring official specifically determines that the health or safety of covered individuals or the integrity of the FEHBP warrants an earlier effective date. In that situation, the notice will specifically inform you that the debarring official decided to shorten or eliminate the 30-day notice period.

(b) *Uncontested debarments.* If you do not contest the proposed debarment, it will take effect on the date stated in the notice of proposed debarment, without further procedures, actions, or notice by OPM.

(c) *Contested debarments and requests for reducing the period of debarment.* If you contest the proposed debarment, it will not go into effect until the debarring official issues a final written decision, unless the health or safety of covered individuals or the integrity of the FEHBP requires your debarment to be effective while your contest is pending.

§ 890.1043 How does my debarment affect me?

(a) *FEHBP payments prohibited.* You may not receive payment, directly or indirectly, from FEHBP funds for items or services that you provide to a covered individual on or after the effective date of your debarment. Also, you may not accept an assignment of a claim for items or services furnished to a covered individual during the period of your debarment. These restrictions remain in effect until you are reinstated by OPM.

(b) *Governmentwide effect.* Your debarment precludes you from participating in all other Federal agencies' procurement and nonprocurement programs and activities, as required by section 2455 of the Federal Acquisition Streamlining Act of 1994. Other agencies may grant you a waiver or exception under their own regulations, to permit you to participate in their programs.

(c) *Civil or criminal liability.* You may be subject to civil monetary penalties or criminal liability if you knowingly file claims, cause claims to be filed, or accept payment from FEHBP carriers for items or services that you provide to a covered individual on or after the effective date of your debarment.

Notifying Outside Parties About Debarment and Suspension Actions

§ 890.1044 What entities will OPM notify of my debarment or suspension?

We will notify the entities listed in paragraphs (a)–(d) of this section about your debarment or suspension.

(a) FEHBP carriers;

(b) General Services Administration, for publication in the comprehensive governmentwide list of Federal agency exclusions;

(c) Other Federal agencies that administer health care or health benefits programs; and

(d) State and local agencies, authorities, boards, or other organizations with health care licensing or certification responsibilities.

§ 890.1045 How will OPM inform persons covered by FEHBP about my debarment or suspension?

After receiving OPM's notice of your debarment or suspension, FEHBP carriers must inform covered individuals who have previously obtained items or services from you of the following:

(a) That you are debarred or suspended;

(b) The minimum period remaining in your period of debarment; and

(c) That OPM must terminate your debarment or suspension before FEHBP funds can be paid for items or services you furnish to covered individuals.

Exceptions to the Effect of Debarments

§ 890.1046 How does my debarment affect payments to me for services I furnish in emergency situations?

You may receive FEHBP funds paid for items or services you furnish on an emergency basis if the FEHBP carrier serving the covered individual determines that:

(a) Your treatment was essential to the health and safety of the covered individual; and

(b) No other source of equivalent treatment was reasonably available.

§ 890.1047 What special rules apply to me as an institutional provider?

(a) *Covered individual admitted before debarment.* If a covered person is admitted before the effective date of your debarment, you may continue to receive payment of FEHBP funds for inpatient institutional services until the covered person is released or transferred, unless the debarring official terminates payments under paragraph (b) of this section.

(b) *Health and safety of covered individuals.* If the debarring official determines that the health and safety of covered persons would be at risk if they

remain in a debarred institution, OPM may terminate your FEHBP payments for them at any time.

(c) *Notice of payment limitations.* If we limit any payment under paragraph (b) of this section, we will inform you of our decision in writing.

(d) *Finality of debarring official's decision.* The debarring official's decision to limit or deny payments under paragraph (b) of this section is not subject to further administrative review or reconsideration.

§ 890.1048 How may I obtain a waiver of my debarment if I am the sole source of health care services in a community?

(a) *Application required.* You may apply for a limited waiver of your debarment at any time after you receive OPM's notice of proposed debarment. Suspended providers are not eligible to request a waiver of their suspension.

(b) *Criteria for granting waiver.* To receive a waiver, you must clearly demonstrate that you meet all of the following criteria:

(1) You are the *sole community provider* or the *sole source of essential specialized services in a community*;

(2) A limited waiver of the debarment would be in the best interests of covered individuals in the defined service area;

(3) There are reasonable assurances that the actions which formed the basis for your debarment will not recur; and

(4) There is no basis under this subpart for continuing your debarment.

(c) *Waiver applies only in the defined service area.* A limited waiver applies only to items or services provided within the defined service area where you are the *sole community provider* or *sole source of essential specialized services.*

(d) *Governmentwide effect continues.* A limited waiver applies only to your FEHBP transactions. Even if we waive your debarment for FEHBP purposes, the governmentwide effect under section 2455 of the Federal Acquisition Streamlining Act of 1994 continues for all other Federal agencies' procurement and nonprocurement programs and activities.

(e) *Waiver rescinded if circumstances change.* We will rescind the limited waiver when any of the conditions on which it is based no longer apply. Examples include, but are not limited to the following:

(1) You cease to provide items or services in the defined service area;

(2) Another provider begins to furnish equivalent items or services in the defined service area, so that you are no longer the sole provider or sole source; or

(3) The actions that formed the basis for your debarment, or similar acts, recur. If we rescind the limited waiver, your debarment will resume full effect for all FEHBP transactions.

(f) *Effect on period of debarment.* The minimum period of your debarment is established when the debarment is initially imposed. A subsequent decision to grant, deny, or rescind a limited waiver will not change that period.

(g) *Application is necessary for reinstatement.* You must apply for reinstatement at the end of your period of debarment, even if your limited waiver is in effect when your debarment expires.

(h) *Finality of debarring official's decision.* The debarring official's decision to grant or deny a limited waiver is final and not subject to further administrative review or reconsideration.

Special Exceptions To Protect Covered Persons

§ 890.1049 How will FEHBP carriers handle claims for items or services furnished after a provider's debarment?

(a) *Covered individual unaware of debarment.* FEHBP funds may be paid for items and services furnished by a debarred provider if, at the time the items or services were furnished, the covered individual did not know, and could not reasonably be expected to know, that the provider was debarred. This provision is intended solely to protect the interests of FEHBP covered persons who obtain services from a debarred or suspended provider in good faith and without knowledge that the provider has been sanctioned. It does not authorize sanctioned providers to submit claims for payment to FEHBP carriers.

(b) *Notice sent by carrier.* When paying a claim under the authority of paragraph (a) of this section, the carrier must send a written notice to the covered individual that includes the following information:

(1) That the provider is debarred and prohibited from receiving payment of FEHBP funds for items or services furnished after the debarment date;

(2) That claims will not be paid for items or services furnished by the debarred provider after the covered individual receives notice of the debarment;

(3) That the current claim is being paid as a legally-authorized exception to the effect of the debarment in order to protect covered individuals who obtain items or services without knowledge of their provider's debarment;

(4) That FEHBP carriers must deny payment of any claim for items or services rendered by a debarred provider 15 days or longer after the date of the notice described in this subsection, unless the covered individual had no knowledge of the provider's debarment when the items or services were rendered;

(5) The minimum period remaining in the provider's debarment; and

(6) OPM must terminate the provider's debarment or suspension before FEHBP funds can be paid for items or services furnished to covered individuals.

§ 890.1050 How may an FEHBP covered individual request an exception to a provider's debarment?

(a) *Request by a covered individual.* Any individual in whose name an FEHBP subscription is issued may submit a request through the FEHBP carrier for continued payment of items or services furnished by a debarred provider to any person covered under that enrollment. Requests will not be accepted for continued payments to suspended providers.

(b) *OPM action on the request.* OPM will consider the recommendation of the FEHBP carrier before acting on the request. To be approved, the request must demonstrate that at least one of the situations in paragraphs (b)(1) or (b)(2) of this section applies.

(1) Interrupting an existing, ongoing course of treatment by the provider would have a detrimental effect on the covered individual's health or safety; or

(2) The covered individual does not have access to an alternative source of the same or equivalent health care items or services within a reasonably accessible service area.

(c) *Scope of the exception.* An approved exception applies only to the covered individual(s) who requested it, or on whose behalf it was requested. The governmentwide effect of the provider's debarment under section 2455 of the Federal Acquisition Streamlining Act is not altered by an exception.

(d) *Provider requests not allowed.* OPM will not consider an exception request submitted by a provider on behalf of a covered individual.

(e) *Finality of debarring official's decision.* The debarring official's decision on an exception request is not subject to further administrative review or reconsideration.

Reinstatement

§ 890.1051 How may I be reinstated when my period of debarment expires?

(a) *Application required.* Reinstatement is not automatic when the minimum period of your debarment expires. You must apply in writing to

OPM, supplying specific information about the reinstatement criteria outlined in paragraph (c) of this section.

(b) *Reinstatement date.* We will accept your reinstatement application no earlier than 60 days before the nominal expiration date of your debarment. However, in no case will we reinstate you before your minimum period of debarment expires.

(c) *Reinstatement criteria.* Your reinstatement application must clearly demonstrate that you meet all of the following criteria:

(1) There are reasonable assurances that the actions resulting in your debarment have not and will not recur;

(2) There is no basis under this subpart for continuing your debarment; and

(3) There is no pending criminal, civil, or administrative action that would subject you to debarment by OPM.

(d) *Written notice of OPM action.* We will inform you in writing of our decision on your reinstatement application.

(e) *Limitation on reapplication.* If we deny your reinstatement application, you may not reapply until 1 year after the date of our decision.

§ 890.1052 Under what circumstances will OPM reinstate me without my filing an application?

If any of the situations identified in paragraphs (a) through (c) of this section occurs, you should inform the debarring official immediately. OPM will reinstate you without the need for a reinstatement application in these circumstances. OPM will send you a written notice concerning the effective date of your reinstatement.

(a) *Conviction reversed.* The conviction on which your debarment was based is reversed or vacated on appeal.

(b) *Sanction terminated.* A sanction imposed by another Federal agency, on which your debarment was based, is terminated by that agency.

(c) *Court order.* A Federal court orders OPM to stay, rescind, or terminate your debarment.

§ 890.1053 Table of procedures and effective dates for reinstatements.

The following table indicates the procedures and effective dates for reinstatements under this subpart:

Basis for debarment	Application required?	Effective date
Period of debarment expires	Yes	After debarment expires.
Conviction reversed on appeal	No	Retroactive (start of debarment).
Other agency sanction ends	No	Ending date of sanction.
Court order ending debarment	No	Retroactive (start of debarment).

§ 890.1054 What agencies and entities will OPM notify about my reinstatement?

We will inform the FEHBP carriers, government agencies and other organizations that were originally notified of your debarment.

§ 890.1055 How may I contest OPM's decision to deny my reinstatement application?

(a) *Obtaining reconsideration of the initial decision.* You, or a representative acting on your behalf, may submit documents and written arguments to the debarring official, opposing the decision to deny your reinstatement application. In addition, you and/or your representative may request to appear in person to present oral arguments to the debarring official. You must submit these materials within 30 days after the date of the decision notice in paragraph (a) of this section.

(b) *Debarring official's final decision on reinstatement.* The debarring official will issue a final written decision, based on the entire administrative record, within 30 days of the record closing to receipt of information. The debarring official may extend the decision period for good cause.

(c) *Finality of debarring official's decision.* The debarring official's final decision is not subject to further administrative review or reconsideration.

Civil Monetary Penalties and Financial Assessments [Reserved]

[FR Doc. 01–30529 Filed 12–11–01; 8:45 am]

BILLING CODE 6325–52–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR PART 1310

[DEA–203C]

RIN 1117–AA52

Establishment of a Threshold for Gamma-Butyrolactone; Correction

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the proposed rule ''Establishment of a Threshold for Gamma-Butyrolactone'' (DEA–203P) which DEA published in the **Federal Register** on October 24, 2001 (66 FR 53746). The proposed rule concerned the establishment of a threshold for the List I chemical gamma-butyrolactone (GBL).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183

SUPPLEMENTARY INFORMATION:

Background

On Wednesday, October 24, 2001, DEA published a Notice of Proposed Rulemaking titled ''Establishment of a Threshold for Gamma-Butyrolactone'' in the **Federal Register** (66 FR 53746). The proposed regulations that are subject to this correction suggest adding new paragraphs at Title 21, Code of Federal Regulations (CFR), 1310.04(g)(1) and 21 CFR 1310.08. These paragraphs suggest that no threshold be established for GBL and that certain transactions in GBL be excluded from the definition of a regulated transaction, respectively. However, a previous Final Rule, published on Wednesday October 17, 2001, already added paragraphs at 21 CFR 1310.04(g)(1)(ii)–(iv) and 21 CFR 1310.08(j). Therefore, to alleviate any confusion which might arise by publication of this proposed rule, DEA is redesignating the text of the paragraphs in the proposed rule to align with the currently amended Code of Federal Regulations. No substantive changes to the proposed text are occurring in this correction. In addition, one typographical error is being corrected.

Accordingly, the publication on October 24, 2001 of the proposed rule (DEA–203P), which was the subject of FR Doc. 01–26741, is corrected as follows:

1. On page 53748, in the first column, sixth line of the fourth full paragraph correct ''(ii)'' to read ''(iii)''.

PART 1310—[CORRECTED]

2. On page 53749, amendatory instruction 2 is corrected to read as follows: ''2. Section 1310.04 is proposed to be amended by adding a new paragraph (g)(1)(v) to read as follows:''

3. Corrected § 1310.04(g)(1)(v) reads as follows:

§ 1310.04 Maintenance of records.

* * * * *

(g) * * *

(1) * * *

(v) gamma-Butyrolactone (Other names include: GBL; Dihydro-2(3H)-furanone; 1,2–Butanolide; 1,4–Butanolide; 4–Hydroxybutanoic acid lactone; gamma-Hydroxybutyric acid lactone)

* * * * *

4. On page 53749, amendatory instruction 3 is corrected to read as follows: ''3. Section 1310.08 is proposed to be amended by adding a new paragraph (k) to read as follows:''

5. Corrected § 1310.08(k) reads as follows:

§ 1310.08 Excluded transactions.

* * * * *

(k) Domestic, import, and export distributions of gamma-butyrolactone weighing 16,000 kilograms (net weight) or more in a single container.

Dated: December 5, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 01–30731 Filed 12–11–01; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK31

Independent Medical Opinions

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the adjudication regulation dealing with independent medical opinions that may be requested to resolve complex or controversial medical issues that may arise in a claim for veterans' benefits. This amendment is a plain language restatement of the existing regulation on this subject, and no substantive changes are being made. The intended effect of this amendment is to clarify the process by which independent medical opinions are obtained.

DATES: Comments must be received on or before February 11, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900-AK31.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Jack Bisset, Consultant, Compensation and Pension Service, Regulations Staff, or Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7213 and (202) 273–7228, respectively. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: This document proposes to restate in plain language the provisions of the current regulation on independent medical opinions, 38 CFR 3.328 and place them in a new section designated as § 3.2410. Current § 3.328 would be removed, and § 3.2410 would be placed in subpart D, Universal Adjudication Rules that Apply to Benefit Claims Governed by part 3 of this title. This is a plain language restatement of the provisions in current § 3.328 and is not intended to change VA policy or regulations in any substantive way.

Proposed § 3.2410 is divided into seven short paragraphs. Each paragraph provides an answer to a brief introductory question. Paragraph (a) answers the question, ''What is an independent medical opinion?'' Paragraph (a) states that an independent medical opinion (IMO) is an advisory opinion from a medical expert who is not a VA employee. Paragraph (a) also makes clear that VA makes arrangements for these opinions with various medical institutions but does not select the individual experts who provide the opinions. That selection is made by officials of the institution. This paragraph is a restatement of paragraph (a) of current § 3.328 except for the first clause of the first sentence.

Paragraph (b) of proposed § 3.2410 answers the question, ''When will an IMO be requested?'' It provides that VA will request an IMO when there is a medical issue in a pending claim which is extremely rare, complex or controversial and cannot be resolved on the evidence of record. This is a restatement of the first clause of paragraph (a) and the first sentence of paragraph (c) of current § 3.328.

Paragraph (c) of proposed § 3.2410 addresses the issue of who can request an IMO. It states that IMOs can be requested by claimants or their representatives, or by Service Center Managers on their own initiative. This is a restatement of the first sentence of paragraph (b) of current § 3.328.

The question in paragraph (d) of proposed § 3.2410 is, ''How do I request an IMO?'' Paragraph (d) provides that a request for an IMO must be submitted to a Service Center Manager for initial review, and the request must include detailed reasons why the IMO is necessary. This is a restatement of portions of the second and third sentences in paragraph (b) of current § 3.328.

Paragraph (b) of § 3.328 currently requires that a request for an IMO be in writing. VA believes that this requirement is too restrictive and can result in claims processing delays. We have, therefore, added to paragraph (d) of proposed § 3.2410 that the requirement for a ''writing'' includes e-mail, facsimile, or other written electronic means. VA does not want to prevent the use of methods of submission which could improve processing timeliness.

The question in paragraph (e) of proposed § 3.2410 is, ''Who approves the request for an IMO?'' Paragraph (e) provides that if the Service Center Manager agrees, on initial review, that an IMO would be appropriate, the request is then forwarded to the Director of the Compensation and Pension Service for approval. If the request is approved, the Director will make arrangements to obtain the IMO. This is a restatement of the last sentence in paragraph (b) and the first two sentences of paragraph (c) of current § 3.328.

Paragraph (f) of proposed § 3.2410 answers the question, ''How will I know if the request is approved?'' Paragraph (f) states that the Director of the Compensation and Pension Service will notify the claimant that the IMO request has been approved and will provide the claimant with a copy of the opinion when it is received. Paragraph (f) also provides that the special disclosure procedures in 38 CFR 1.577(d) must be followed if the Director believes that disclosure of the IMO would be harmful to the claimant's physical or mental health. Paragraph (f) is a restatement of

the provisions in paragraph (d) of current § 3.328.

Paragraph (g) of proposed § 3.2410 answers the last question, ''Can I appeal a VA decision denying my request for an IMO?'' Paragraph (g) provides that, if VA decides that an IMO is not appropriate in a particular case, the claimant cannot directly appeal that decision. The claimant can only contest that decision as part of an appeal on a denial of benefits in the case. This is a restatement of the last sentence in paragraph (c) of current § 3.328.

This rulemaking reflects VA's goal of making government more responsive, accessible, and comprehensible to the public. The Plain Language Regulations Project was developed as a long-term comprehensive project to reorganize and rewrite in plain language the adjudication regulations in part 3 of title 38, Code of Federal Regulations. This proposed rule is one of a series of proposed revisions to those regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act, Public Law 104–4, March 22, 1995, requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule does not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 ad 604.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, 64.110, and 64.127.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: December 3, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation.

1.The authority citation for part 3, subpart A continues to read as follows:

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

§ 3.328 [Removed].

2. Section 3.328 is removed.

Subpart D—Universal Adjudication Rules that Apply to Benefit Claims Governed by part 3 of This Title.

3. The authority citation for part 3, subpart D continues to read as follows:

Authority: 38 U.S.C. 501(a) unless otherwise noted.

4. New §3.2410 is added under a new undesignated center heading ''Evidence Requirements'' to read as follows:

Evidence Requirements

§ 3.2410 Independent medical opinions.

(a) *What is an independent medical opinion?*

An independent medical opinion is an advisory opinion that VA obtains from one or more medical experts who are not VA employees to assist VA in deciding a claim for benefits. Although VA makes arrangements for these opinions with recognized medical schools, universities, clinics and medical institutions, the individual experts who provide the opinions are selected by appropriate officials of the institutions and not by VA.

(b) *When will an independent medical opinion be requested?*

VA will request an independent medical opinion when a pending claim involves a medical issue which is extremely rare, complex or controversial, and the evidence of record is insufficient to resolve the issue.

(c) *Who can request an independent medical opinion?*

An independent medical opinion can be requested by you, your representative, or a Service Center Manager on his or her own initiative.

(d) *How do I request an independent medical opinion?*

You or your representative must submit the request for an independent medical opinion to the Service Center Manager for initial review. The request must be submitted in writing, including e-mail, facsimile, or other written electronic means, and must include detailed reasons why you believe the independent medical opinion is necessary.

(e) *Who approves the request for an independent medical opinion?*

The request for an independent medical opinion is initially reviewed by the Service Center Manager. If the Service Center Manager agrees that an independent medical opinion is appropriate, the Service Center Manager will forward the request to the Director of the Compensation and Pension Service for approval. If approved, the Director will make arrangements for the independent medical opinion.

(f) *How will I know if the request is approved?*

When the request for an independent medical opinion is approved, the Director of the Compensation and Pension Service will notify you of the approval and will provide you with a copy of the opinion when it is received. However, if the Director believes that information contained in the independent medical opinion would be harmful to your physical or mental health, the special procedures in § 1.577(d) must be followed.

(g) *Can I appeal a denial of my request?*

You cannot directly appeal a VA decision denying your request for an independent medical opinion. If VA decides that an independent medical opinion is not appropriate in your case, the reason will be explained in the notice VA sends you about the decision on your claim. You may contest the disapproval of your request for an independent medical opinion only as part of an appeal of the decision made by VA denying benefits in your case.

(Authority: 38 U.S.C. 5109, 5701(b)(1); 5 U.S.C. 552a(f)(3))

[FR Doc. 01–30612 Filed 12–11–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL212–1b;FRL–7098–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to volatile organic compound (VOC) rules for Formel Industries, Incorporated (Formel). This flexographic printing facility is located in Cook County, Illinois. The revisions, submitted on March 21, 2001, consist of an adjusted standard from the Flexographic Printing Rule, 35 IAC 218.401(a), (b), and (c). The adjusted standard conditions include participation in the market-based emissions trading system, daily record keeping of inks and VOC content, conducting trials of compliant inks, and reviewing alternate control technologies. The Illinois Pollution Control Board approved this adjusted standard because the Board considers this to be the Reasonably Achievable Control Technology for Formel.

DATES: The EPA must receive written comments by January 11, 2002.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604.

You may inspect copies of Illinois's submittal at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, Telephone: (312) 886–6524.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

Table of Contents

I. What actions are the EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Actions Are the EPA Taking Today?

The EPA is proposing to approve revisions to VOC rules for Formel of Cook County, Illinois. The revisions consist of an adjusted standard from the Flexographic Printing Rule, 35 IAC 218.401(a), (b), and (c). The adjusted standard conditions include participation in a market-based emissions trading system, daily record keeping of inks and VOC content, conducting trials of compliant inks, and reviewing alternate control technologies.

The market-based trading system will allow Formel to buy emissions allotments from companies which can reduce their VOC emissions at a lower cost than Formel can. The total VOC emissions of all participants meets the desired reductions for the non-attainment area. Limiting VOC emissions will help to reduce ozone because VOC can chemically react in the atmosphere to form ozone.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 25, 2001.

David A. Ullrich,

Deputy Regional Administrator, Region 5.

[FR Doc. 01–30582 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 0140–1140; FRL–7116–4]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Kansas for the purpose of controlling volatile organic compound (VOC) emissions from commercial bakery ovens in Johnson and Wyandotte Counties, Kansas. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. 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. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by January 11, 2002.

ADDRESSES: Comments may be mailed to Lynn M. Slugantz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Lynn M. Slugantz at (913) 551–7883.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: November 28, 2001.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 01–30580 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–7114–7]

Amendments to Standards of Performance for New Stationary Sources; Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments and request for public comment.

SUMMARY: This proposal is a supplement to proposals previously published in the **Federal Register**. Today's action proposes revisions to previously proposed Performance Specification 11

(PS–11): Specifications and Test Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources and Procedure 2: Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources. We are seeking public comment on these proposed revisions.

DATES: *Comments.* You must submit comments so that they are received on or before January 11, 2002.

Public Hearing. If a public hearing has been requested, and anyone contacts us requesting to speak at a public hearing by December 26, 2001, a public hearing will be held on January 28, 2002 beginning at 9:00 a.m. If you are interested in attending the hearing, you must call the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**). If a hearing is held rebuttal and supplementary information may be submitted to the docket for 30 days following the hearing.

Request to Speak at Hearing. If you wish to present oral testimony at the public hearing, you must call the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**) by January 11, 2002.

ADDRESSES: *Comments.* Submit your written comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (LE–131), Attention: Docket No. A–2001–10, Room M–1500, U. S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. We request that you send a separate copy of your comments to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If anyone contacts us requesting a public hearing, it will be held at the Emission Measurement Center, Research Triangle Park, North Carolina. If you are interested in attending the hearing or presenting oral testimony, you must contact the person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Docket. A docket, No. A–2001–10, containing information relevant to this rulemaking, is available for your use between 8:30 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. You can find the docket at EPA's Air Docket Section, Room M=–1500, First Floor, Waterside Mall, 401 M Street, SW, Washington, D.C. 20460. You may be charged a reasonable fee for copying.

Comments. You may submit your comments by electronic mail (e-mail) to: *a-and-r-docket@epa.gov and bivins.dan@epa.gov.* You must submit e-mail comments either as an ASCII file avoiding the use of special characters and any form of encryption or as an attachment in WordPerfect© version 5.1, 6.1 or Corel 8 file format. You must note the docket number: (A–2001–10) on all comments and data submitted in electronic form. Do not submit confidential business information (CBI) by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Worldwide Web (WWW). In addition to being available in the docket, you can find an electronic copy of this supplemental proposal on the WWW through the Technology Transfer Network (TTN). Following signature, we will post a copy of the supplemental proposal on the Emission Measurement Center's TTN web site at http://www.epa.gov/ttn/emc under Monitoring. We are only accepting comment of the items in this supplemental proposal. The TTN provides information and technology exchange in various areas of air pollution control. If you need more information regarding the TTN, call the TTN HELP line at (919) 541–5384.

FOR FURTHER INFORMATION CONTACT: For information concerning the supplemental proposal, contact Mr. Daniel G. Bivins, Emission Measurement Center (MD–19), Emissions, Monitoring, and Analysis Division, U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5244.

SUPPLEMENTARY INFORMATION: *Outline.* We provided the following outline to aid in reading the preamble to the supplemental proposal.

I. Introduction
II. Summary of Changes
A. Changes to PS–11
B. Changes to Procedure 2
III. Administrative Requirements
A. Docket
B. Executive Order 12866, Regulatory Planning and Review
C. Regulatory Flexibility Act
D. Executive Order 13132, Federalism
E. Paperwork Reduction Act
F. Unfunded Mandates Act
G. National Technology Transfer and Advancement Act
H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
I. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments
J. Executive Order 13211, Energy Effects

I. Introduction

PS–11, Specifications and Test Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources, and Procedure 2, Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources, were first published in the **Federal Register** on April 19, 1996 (61 FR 17358) as part of the proposed Hazardous Waste Combustion MACT standard. PS–11 and Procedure 2 were published again on December 30, 1997 (62 FR 67788) for public comment on revisions made to these procedures. Since then, we have continued to learn about the capabilities and performance of PM CEMS through performing and witnessing field evaluations and through discussions with our European counterparts.

Additional experience with the procedures of PS–11 and Procedure 2 led us to propose these further revisions to the December 30, 1997, proposed versions. Today's supplemental proposal provides you an opportunity to comment on the additional revisions made to PS–11 and Procedure 2. Note, we are only accepting comments on the revisions discussed in this supplemental proposal, not the entire contents of PS–11 and Procedure 2, because we have already provided a full opportunity for comment on everything but the changes being proposed today. The changes proposed in today's notice build upon our previous proposal, are largely in response to comments received on that proposal, and further reflect relevant new information obtained subsequently. Because we are seeking comment on only these changes, we believe that 30 days provides sufficient opportunity for the public to assess and comment on today's reproposal.

II. Summary of Changes

A major, non-technical change to PS–11 and Procedure 2 is the presentation, which is now in plain language. We believe this change makes the specifications more understandable. Also, a minor amount of reorganization was done to accommodate the plain language changes. The technical changes are presented in paragraphs A and B. We believe these changes make PS–11 and Procedure 2 more user friendly and applicable to all source categories. These changes also fill the gaps that existed in the earlier proposal.

A. Changes to PS–11

1. Sampling Time for Batch CEMS

Section 6.2.3 of the previous proposal stated:

> Sampling time no less than 35 percent of the averaging period for the applicable

standard or no less than 35 percent of the response time.

In this proposal, the sampling time is being revised in sections 13.3(2)(ii) and 13.3(2)(i) as follows:

Your PM CEMS sampling time must be no less than 30 percent of the cycle time.

The cycle time must be no longer than 15 minutes. This proposed change to the previous version was made to be consistent with the CEMS cycle time requirement in 40 CFR 60.13 (d)(2).

2. Paired Trains for Reference Method (RM) Sampling

Section 8.4.3 of the previous proposal stated:

Use of paired trains is recommended.

The use of paired trains for the RM sampling is being revised in Section 8.6(1)(i) as follows:

You must use paired RM trains when collecting manual PM data.

Originally, we only recommended the use of paired trains for the RM. Now, we are proposing to require paired trains. Paired trains will help ensure the validity of the RM data and eliminate the possibility that correlation problems are the result of bad RM data. We have witnessed testing and obtained results where the paired trains failed the precision criteria. In these cases, it must be assumed that at least one RM sample was incorrect. Several of you commented that we need to specify how much error is acceptable in the RM measurement and to specify when to eliminate imprecise RM data. Therefore, we needed to require paired trains along with setting precision limits for the RM data.

3. Reference Method for Particulate Sampling

Section 8.4.2 of the previous proposal referenced the use of Method 5I. The RM for particulate sampling is being revised in Section 8.6(1) to require the RM specified in the applicable regulation.

In the 1997 draft PS–11, we specified Method 5I as the correlation RM. This was an oversight on our part. Many of you commented that other PM methods should be included. We intend that the RM used to correlate the PM CEMS be that method designated in the applicable regulation. Methods 5 and 17 are applicable RMs. The applicable regulation specifies the RM which in turn designates what is included as PM. This is important for dealing with condensible PM.

4. Condensible Particulate

In the previous proposal, condensible particulate was not specifically addressed. Now, in Section 8.1(1) and 8.1(1)(ii), we are making the following additions:

You must select a PM CEMS that is appropriate for the flue gas conditions at your source.

If condensible PM is an issue, your PM CEMS must maintain the sample gas temperature at the same temperature as the RM filter.

Many of you commented that we needed to address the issue of condensible particulate. Some suggested that the RM filter temperature should be set to match the PM CEMS temperature. Since the RM designates what is considered particulate matter for a source category, we believe that the PM CEMS temperature must be maintained at the temperature of the RM filter. For example, if Method 5 at 248°F ± 25°F is the designated RM and condensible PM is an issue, your PM CEMS must report the PM concentration at 248°F ± 25°F. Some PM CEMS models may not be applicable for sources where condensible PM is an issue.

5. Maximum PM Concentration During Initial Correlation Test

Section 8.4.5 of the 1997 proposal stated:

Vary the process or PM control device as much as the process allows. If it is not possible or practical to obtain PM measurements at the standard, it is recommended that at least six measurement sets be performed at the maximum PM emission level achievable. * * *

The PM concentrations to be included in the initial correlation test are being revised in Section 8.6(4) as follows:

You must attempt to make the simultaneous PM CEMS and RM measurements at three different levels of PM concentrations over the full range of operations identified during the Correlation Test Planning Period. You must attempt to obtain the different levels of PM mass concentration by varying process or PM control device conditions as identified during your PM CEMS Shakedown period and Correlation Test Planning Period.

Many of you commented that causing PM emissions to be twice the emission standard was not acceptable procedure for generating PM CEMS correlation data. Some of you wanted to collect data over longer periods to cover the full operating range of PM concentration. Others of you wanted us to develop methods for generating PM at different concentration levels. Therefore, what we are proposing is to require a Correlation Test Planning Period during which your PM CEMS measures PM and records the monitor's readings that occur during the full range of operating conditions. During the Correlation Test Planning Period, we believe that you can establish the process and control device settings that cause higher and lower PM CEMS responses. The range of PM CEMS readings recorded during this period establishes the levels of PM concentration that you must include in your PM CEMS correlation data set. We are no longer proposing to require you to exceed your emission limit in order to correlate your PM CEMS.

6. Levels of PM Concentration for the Correlation Test

In the previous proposal, Section 8.4.5 listed the following three levels of PM concentrations to be included in the correlation test:

At least three of the minimum 15 measured data points must lie within each of the following levels:

Level 1: 0 to 30 percent of the maximum PM concentration.

Level 2: 30 to 60 percent of the maximum PM concentration.

Level 3: 60 to 100 percent of the maximum PM concentration.

In Sections 8.6(4)(iii),(iv) and 8.6(5), we are proposing to revise these levels as follows:

At least 20 percent of the minimum 15 measured data points you use must be contained in each of the following levels as determined by your PM CEMS during the Correlation Test Planning Period:

- Level 1: From no PM (zero concentration) emissions to 50 percent of the maximum PM concentration;
- Level 2: 25 to 75 percent of the maximum PM concentration; and
- Level 3: 50 to 100 percent of the maximum PM concentration.

Although the above levels overlap, you may only apply individual run data in one level.

If you cannot obtain three distinct levels of PM concentration during normal operations, you must perform correlation testing at whatever range of PM concentrations your PM CEMS recorded during the Correlation Test Planning Period. To ensure that the range of data for your PM CEMS's correlation is maximized, you must follow one or more of the steps in paragraphs (i) through (iv).

Many of you commented that the PM concentration levels in the 1997 draft PS–11 were too rigid and narrowly defined. You wanted flexibility because adjusting your air pollution control device is not an exact science and not always repeatable. Therefore, to provide flexibility, we have expanded the levels and allowed overlap between the levels. Also, we recognized that you may have a source that does not have much variability in the PM emissions. We propose to allow you to collect data over a narrow range of PM concentrations if that narrow range is supported by the data collected during the Correlation Test Planning Period. Also, we have included suggestions to expand the range of correlation data. You are encouraged to try to expand the correlation data set because, if you exceed the highest PM CEMS response used in the correlation data by 125 percent when you are monitoring emissions, you will need to collect additional data to add to the correlation data set.

7. Extrapolation of the PM CEMS Correlation Relation

In the previous proposal, extrapolation of the PM CEMS correlation relation was not specifically addressed. Now, in Section 8.8, we are proposing to make the following addition:

Data you collect during the correlation testing should be representative of the full range of normal operating conditions at your source as observed during the Correlation Test Planning Period. But, this may in some situations consist of data over a narrow range of PM concentration and PM CEMS response that is well below your source's PM emission limit. Even so, you must use this data to develop the correlation.

If your source later generates three consecutive hourly averages greater than 125 percent of the highest PM CEMS response (e.g., milliamp reading) used for the correlation curve, you must arrange to collect additional correlation data at the higher PM CEMS response, unless we, the State and or local enforcement agency determine that repeating the condition is not advisable.

In this event, you must conduct three additional test runs at the higher response, and revise the correlation equation within 30 days after the occurrence of the three consecutive hourly averages. You must use that new data along with the previous data to calculate a revised correlation equation.

Since we recognize that your source's PM emissions may not have much variability, we propose to allow you to collect correlation data over a narrow range of PM concentrations. But, if three consecutive hourly average PM CEMS readings are greater than 125 percent of the highest PM CEMS reading in your correlation, we are requiring you to collect data at higher readings and add the new data to the correlation data set. Extrapolating the correlation relation and its confidence and/or tolerance bounds beyond the data set will necessarily result in decreased precision in the PM concentration reported by the PM CEMS. For example, if your PM CEMS responses ranged from 4.5 to 5.5 millamps (mA) during your correlation test, your correlation can only be used to report PM emission concentrations up to readings of 6.88 mA. If you have three consecutive hourly average PM CEMS readings greater than 6.88 mA, you are required to collect data at the higher readings and add the new data to the correlation data set. We are requiring you to calculate a new correlation, including an examination of both polynomial and linear forms of the relationship. We are requiring that you complete the testing and correlation development within 30 days of the occurrence. If the reason for exceeding the 125 percent limit for more than three hours was due to a serious failure of the air pollution control system, obviously, we will not make you repeat that operating condition for correlation test purposes.

8. Pretest Preparations—Shakedown Period and Correlation Test Planning Period

As we have stated, a Shakedown period and Correlation Test Planning Period did not exist in the previously proposed version of PS–11. We are now proposing to revise PS–11 in Sections 8.4(1) and 8.4(2) to include requirements for operating your PM CEMS over a shakedown period and over a Correlation Test Planning Period.

Some of you commented that we should prescribe the methods to obtain a range of PM concentrations. We are not proposing to do this. Also, some of you noted that we did not define the maximum PM concentration for the three PM concentration levels. To assist you in planning to conduct the correlation testing, we are proposing to institute a shakedown period and a Correlation Test Planning Period. The shakedown period is similar to a burn-in period, where you and your instrument technicians become familiar with the operation of your PM CEMS. For some of you, the shakedown period will be long, for others, it will be shorter. We considered specifying an amount of time for the shakedown period, but we decided to give you the flexibility to decide when you were comfortable with the operation of your PM CEMS. Following the shakedown period, we envision a period when you operate your PM CEMS in its normal manner and record the monitor's responses. During this Correlation Test Planning Period, you need to establish the relationship between your process operation, air pollution control device operation and PM emissions. Again, we considered specifying an amount of time for the Correlation Test Planning Period, but we decided to give you the flexibility to decide when you understood the operation of your process and air pollution control device sufficiently to reproduce a range of PM concentrations. However, your shakedown period and Correlation Test Planning Period must not extend beyond the date when you are required to report PM emissions with your PM CEMS. You should use the knowledge gained during the Correlation Test Planning Period to operate your process in the manner necessary to obtain the different PM CEMS response levels during the correlation test. For example, if your PM CEMS had 15-minute average responses between 5.5 and 12 mA during the Correlation Test Planning Period, you would operate your process to obtain correlation data points that cover 5.5 to 12 mA output from your PM CEMS.

9. Verification of the Initial Correlation

In the previous proposal, Section 8.5 contained the following requirement regarding verification testing of the initial correlation:

For CEMS with measurement technologies insensitive to changes in PM properties, only one initial correlation test is required. For CEMS with measurement technologies sensitive to PM property changes, at least three correlation tests are required. The second correlation test result is compared to the first to determine the best correlation model. The two data sets are combined to calculate the correlation equation. The third correlation result is compared to the result from the first two. If this third correlation result confirms the findings of the original two correlations, the data from all three tests are combined to calculate the correlation equation for the PM CEMS. If the third correlation finds some other fit, then additional correlation tests are required until the best fit correlation can be determined. The final correlation equation is calculated from the composite of all the correlation data collected.

We are proposing to eliminate the need to conduct multiple correlation tests in this revised PS–11.

In the 1997 draft PS–11, we envisioned a scenario where some types of PM CEMS would need to verify that the PM CEMS correlation relation remained constant over short periods of time. Whereas, some other types of PM CEMS would only undergo a single correlation test. We have since abandoned that process. You are now responsible for purchasing a PM CEMS that is appropriate for your source's PM characteristics and your source's operation. If your flue gas and PM characteristics are variable, you must select a PM CEMS that can respond appropriately to those variations.

10. Correlation Criteria

We are proposing a minor revision to the correlation criteria. In the previous proposal (Section 13.2), the correlation coefficient was to be greater than or equal to 0.90. In today's revised PS–11 (Section 13.2(1)), the correlation coefficient must be greater than or equal to 0.85.

We have relaxed the correlation coefficient criterion but have retained the confidence interval and tolerance interval criteria to reflect the performance and reliability of PM CEMS during recent field evaluations and through discussions with our European counterparts.

11. PM CEMS Equipment—Diagnostic Checks

In the previous proposal, no requirements existed for diagnostic checks. In Section 6.2(2)of today's proposal, the following diagnostic checks are required:

Your PM CEMS must also be capable of performing automatic diagnostic checks and sending instrument status signals (flags) to the data recorder.

We learned during our field evaluations that recording diagnostic check failures provided valuable information about the operation and maintenance needs (e.g., dirty window check and low battery power) of the PM CEMS.

12. PM CEMS Equipment—Sample Volume Check

The previous proposal contained no requirement for a sample volume check. Section 6.2(3) of the revised PS–11 contains the following requirement:

If your PM CEMS is an extractive type that measures the sample volume and uses the measured sample volume as part of calculating the output value, your PM CEMS must check the sample volume to verify the sample volume measuring equipment. You must do this sample volume check at the normal sampling rate of your PM CEMS.

For some types of PM CEMS, the measured sample volume is part of the calculated output response. Therefore, a check that ensures the proper operation of the equipment that measures the sample volume is as important as the daily zero and upscale drift check of the sample measurement. We are requiring a daily sample volume check. The sample volume check is not the same as the sample volume audit found in Procedure 2. The sample volume check confirms the proper operation of the sample volume measurement equipment. The sample volume audit evaluates the accuracy of the sample volume measured value.

13. PM CEMS Equipment—Appropriate Measurement Range and Automatic Range Switching

In Section 6.1.1.5 of the previous proposal, the monitor was to be spanned as follows:

The span of the instrument shall be sufficient to determine the highest concentration of pollutant at the facility. The span value shall be documented by the CEMS manufacturer with laboratory data.

We are proposing to revise PS–11 in Sections 6.3, 6.4, 8.1(2), and 8.4(3) as follows:

Your PM CEMS must be initially set up to measure over the expected range of your source's PM emission concentrations during routine operations. This will allow your PM CEMS to detect and record significant high PM concentrations encountered during the Correlation Test Planning Period. You may change the measurement range to a more appropriate range during the Correlation Test Planning Period based on your findings.

Your PM CEMS may be equipped to perform automatic range switching so that it is operating in a range most sensitive to the detected concentrations. If your PM CEMS does automatic range switching, you must appropriately configure the data recorder to handle situations of data values being recorded in multiple ranges during range switching intervals.

Therefore, you must select a PM CEMS that is capable of measuring the full range of PM concentrations expected from your source from normal levels through the emission limit concentration.

You must set the response range of your PM CEMS such that its output is within 50 to 60 percent of its maximum output (*e.g.,* 12 to 13.6 mA on a 4 to 20 mA output) when your source is operating at the conditions that were previously observed to produce the highest PM CEMS output. But, the response range must be set such that no 15-minute average equals your PM CEMS maximum output (*e.g.,* 20 mA). In some cases, you may desire to set the response range of your PM CEMS such that its output is 50 to 60 percent of its maximum output (*e.g.,* 12 to 13.6 mA on a 4 to 20 mA output) when your source is operating at its PM emission limit. You may do this by perturbing operation of the air pollution control equipment or bypassing part of the flue gas around the control equipment in order to create PM emissions at the emission limit.

The determination of the instrument span as stated in the 1997 draft PS–11 was inadequate. We are now providing a clearer specification for the PM CEMS measurement range. During our field evaluations, we found that setting the measurement range such that the response to the highest PM concentration was about 12–14 mA gave enough sensitivity to measure the lower PM concentrations and ensure that short-term spikes were adequately represented. If the range is set such that brief spikes are within the measurement range, normal readings would likely be near the detection limit of the monitor.

14. PM CEMS Equipment—Isokinetic Sampling

The previous proposal contained no requirement for isokinetic sampling. Section 6.1(3) of today's revised PS–11 contains the following addition for isokinetic sampling:

If your PM CEMS is an extractive type and your source's flue gas volumetric flow rate varies by more than 10 percent from nominal, your PM CEMS must maintain an isokinetic sampling rate (within 10 percent of true isokinetic). If your extractive type PM CEMS does not maintain an isokinetic sampling rate, you must use actual site-specific data to prove to us, the State and/or local enforcement agency that isokinetic sampling is not necessary.

A few of you expressed concern about extractive PM CEMS not sampling isokinetically during all sampling conditions. During one of our field evaluations, our extractive PM CEMS response was lower than expected when the monitor was sampling about 130 percent isokinetic. During an industry field evaluation, an extractive beta gauge PM CEMS was deliberately made to sample about 65 percent isokinetic. Sampling under-isokinetic caused the monitor's response to read higher than during isokinetic sampling. Therefore, we are proposing to require that extractive type PM CEMS sample isokinetically at all stack gas volumetric flow rates unless you can provide site-specific data that shows isokinetic sampling is not necessary.

15. PM CEMS Measurement Location in Relation to Air Pollution Control By-Pass

The previous proposal contained no requirement for the measurement location in relation to the air pollution control by-pass. Section 8.2(4) of the revised PS–11 contains the following requirement:

If you plan to achieve higher emissions, for correlation test purposes, by adjusting the performance of the air pollution control device (per Section 8.6(5)(i)) or by installing a means to bypass part the of flue gas around the control device, you must locate your PM CEMS measurement (and manual RM measurement) location well downstream of the control device or bypass (e.g., downstream of the induced draft fan), in order to minimize PM stratification that may be created in these cases.

Additionally, we are adding the following guidance in section 2.4(2) related to the PM CEMS installation location:

If you suspect that PM stratification may vary at the selected installation location, we recommend you perform a PM profile test to determine the magnitude of the variability in PM stratification. If the PM stratification varies by more than 10 percent, you must either choose another installation location or eliminate the stratification condition.

Some of you commented that guidance should be given regarding the sampling location of the PM CEMS and the RM. Based on our and industry's field evaluations, we found that the measurement location played an important role in the success or failure of the initial correlation and the stability of the correlation. During one of our studies, we found that, when we were perturbing the air pollution control device, the particulate concentration

was stratified because we were not far enough downstream from the mixing point for the particulate to become evenly dispersed. Therefore, we are providing guidance for locating the PM CEMS in relation to an air pollution control by-pass, if used. Obviously, the 8 duct diameters and 2 duct diameters criteria is ideal, but we recognize that a location meeting those criteria is not always available or accessible. Therefore, we recommend that you select a measurement location that minimizes problems due to flow disturbances, cyclonic flow, and stratification. The main induced draft (ID) fan can provide mixing and blending of the gas stream components; therefore, locating the PM CEMS downstream of the ID fan can reduce stratification. Also, because changing PM stratification will adversely affect the correlation, we are recommending that you perform a PM profile test at the PM CEMS installation location to determine the magnitude of any variation in PM stratification. Our and industry's PM stratification test results showed that when the PM stratification varied by more than 10 percent, an accurate correlation could not be maintained.

16. Pretest Preparations—Preliminary RM Testing

The previous proposal contained norequirement for preliminary testing. Section 8.4(4) of the revised PS–11 contains the following addition:

> We recommend that you perform preliminary manual RM testing after the Correlation Test Planning Period. During this preliminary testing, you would measure the PM emission concentration corresponding to the highest PM CEMS response observed during the full range of normal operation, or when perturbing or bypassing the control equipment.

Based on what we and industry experienced during field evaluations, we believe some preliminary testing can help improve the performance of the initial correlation test. For example, we observed that preliminary testing (1) helped set the proper PM CEMS measurement range, (2) provided guidance when perturbing the air pollution control device, and (3) helped understand what process operating conditions produced what PM emission concentration. Therefore, we are recommending that you do some preliminary test runs before starting the initial correlation test.

17. Reference Method Data—Precision and Bias

The previous proposal contained no requirement for precision and bias in the RM data. Section 8.6(1)(ii) and (iii) of the revised PS–11 contains the following additions for precision and bias:

> During all paired train testing, you must eliminate from the data set used to develop a PM CEMS correlation any pair of data that do not meet the precision criteria specified in Procedure 2, paragraph 10.1(3).
>
> You must test the valid data set for bias according to Procedure 2, Section 10.1(4)(i). You may not use biased data in developing your PM CEMS correlation. You must identify and correct the source of the bias before repeating the manual testing program. Therefore, we strongly recommend that as soon as results from several test runs become available, you immediately examine the data set for evidence of bias so that you can take any necessary corrective action before continuing the testing. This examination would require you to determine the RM particulate concentration results on-site.

Some of you commented that PS–11 needed to specify what RM data should not be included in the correlation data set. We have included criteria for precision of the paired RM measurements and bias between the paired RM measurements found in the entire RM data set. You will find the criteria in Procedure 2.

18. Calculation of Confidence Interval and Tolerance Interval as a Percent of the Emission Limit

In today's proposed revised PS–11, we made a change in the PM concentration levels needed for your PM CEMS correlation. Because of this change, you may collect PM concentration data that is below the emission limit. Therefore, we need to define the PM CEMS response where you calculate both the confidence interval and tolerance interval as a percent of the emission limit for evaluating the performance of the correlation.

Previously, you were instructed to calculate the PM CEMS response at the emission limit and then to calculate the confidence interval and tolerance interval of the correlation curve at that PM CEMS response. This was an appropriate procedure when you collected PM concentration data at twice the emission limit. However, if your PM concentration data does not extend up to the emission limit, calculating the confidence interval and tolerance interval of the correlation curve at the emission limit is not statistically relevant.

In the previous proposed version of PS–11, the confidence interval and tolerance interval were calculated at the emission limit which was approximately the median value of the PM CEMS response. The confidence interval and tolerance interval are smallest at the median value of the PM CEMS response. Therefore, we are stipulating in today's revised PS–11 that you calculate the confidence interval and tolerance interval at the median value of the PM CEMS responses you obtained during the correlation test.

B. Changes to Procedure 2

1. Definition of Calibration vs. Correlation

In the previous proposal, Section 2.3 defined calibration relation as follows:

> The relationship between a CEMS response and measured PM concentrations by the RM which is defined by a mathematical equation.

In today's revision to Procedure 2, this definition is not included. The PS–11 definition was changed from calibration to correlation as follows:

> ''Correlation'' means the primary mathematical relationship for correlating output from your PM CEMS (typically expressed in some units, e.g., such as response to a milliamp electrical signal) to a particulate concentration, as determined by the RM. The correlation is expressed in the same units that your PM CEMS use to measures the PM concentration.

A few of you commented that ''calibrating'' the PM CEMS to the manual method data was confusing language. Therefore, we now refer to the process as ''correlation.''

2. Response Correlation Audit (RCA) Data Points

In the previous proposal, Section 5.1.1 contained the following requirement for the RCA data points:

> If it is not practical to obtain three measured data points in all three PM concentration ranges as specified in Section 8.4.5 of PS–11, a minimum of three measured data points in any of the two ranges specified in Section 8.4.5 is acceptable, as long as at least all 12 data points lie within the range of the calibration relation test.

Section 10.3(5)(ii) of Procedure 2 is revised as follows:

> All 12 data points must lie within the PM CEMS output range examined during the PM CEMS correlation tests.

With this revision, we have clarified where the data points for the RCA must be.

3. Absolute Calibration Audit (ACA) Audit Point Ranges

Section 5.1.2 of the previous proposal contained the following ACA audit points:

> Audit point 1—0 to 20 percent of span value
> Audit point 2—40 to 60 percent of span value
> Audit point 3—80 to 100 percent of span value.

The ACA audit points are revised as follows in Section 10.3(2):

Audit point 1—0 to 20 percent of measurement range
Audit point 2—40 to 60 percent of measurement range
Audit point 3—70 to 100 percent of measurement range.

We removed the word span from PS–11 and Procedure 2. The audit points now reference the measurement range instead of span value. Also, we expanded the third audit point range.

4. ACA Performance Requirement

Section 5.2.3(2) of the previously proposed version had the following ACA requirement:

± 15 percent of the average audit value or 7.5% of the applicable standard, whichever is greater.

The ACA performance criterion are revised in Section 10.4(3) as follows:

Your PM CEMS is out of control if results exceed ± 10 percent of the average audit value or 7.5 percent of the applicable standard, whichever is greater.

We are reducing the performance criterion for the ACA. Based on the results of our field evaluations, our PM CEMS were capable of meeting the ± 10 percent ACA criterion. The 15 percent limit was a holdover from the cylinder gas audit criterion.

5. Relative Response Audit (RRA)

The previous proposed version of Procedure 2 did not include a relative response audit (RRA). We are revising Procedure 2 in Sections 10.3 and 10.3(4) by adding the following:

You must conduct an RRA once every four calendar quarters. If you schedule an RCA for one of the four calendar quarters in the year, the RCA would take the place of the RRA.

You must conduct the RRA by collecting three simultaneous RM PM concentration measurements and PM CEMS measurements at the as-found source operating conditions and PM concentration. Paired trains for the RM sampling are not required but are recommended to avoid failing the test due to imprecise and inaccurate RM results.

Procedure 2 did not specify the frequency for a relative correlation audit (RCA). Many of you commented that the RCA could be done once every 3 to 5 years. One of you commented that 18 months was appropriate between checks of the correlation's stability. We believe that the length of time between checks of the correlation's stability could be source dependent, and therefore, can be specified in the applicable regulation. However, based on our and industry's field evaluations, we observed that the correlations may not be stable for periods of 3 to 5 years. We believe that PM CEMS should be correlated more often than every 5 years. Therefore, we propose a brief, three test run, confirmation of the correlation that would be done on an annual basis. We identify this check as a relative response audit.

6. Sample Volume Audit (SVA)

Section 5.1.4 of the previous proposal contained the following SVA requirement:

For applicable units with a sampling system, an audit of the equipment to determine sample volume must be performed once a year. The SVA procedure specified by the manufacturer will be followed to assure that sample volume is accurately measured across the normal range of sample volumes made over the past year.

In the 1997 draft Procedure 2, we left the procedure for conducting the SVA to the manufacturer. Based on our experiences, we decided to specify a procedure to conduct the SVA. This way, all SVAs will be done in a consistent manner, and the results can be compared.

7. Routine System Checks

The previous proposal of Procedure 2 contained no provisions specific to routine system checks. Section 10.2 of today's revised Procedure 2 contains the following addition of routine system checks:

You must perform routine checks to assure proper operation of system electronics and optics, light and radiation sources and detectors, electric or electro-mechanical systems, and general stability of the system calibration. Necessary components of the routine system checks will depend upon design details of your PM CEMS.

A few of you commented that the daily drift check specifications were not adequately defined to prohibit the sale of poor quality instruments. Therefore, we have clarified that the routine (daily) checks must include the entire measurement system. This language is similar to that in the new PS–1 (or ASTM D6216) for opacity monitors.

8. Treatment of Flagged Data

Section 6.4 of the previous proposal treated flagged data as follows:

All flagged CEMS data are considered invalid; as such, these data may not be used in determining compliance nor be counted towards meeting minimum data availability as required and described in the applicable subpart.

We are proposing to revise Procedure 2 by eliminating the specification to treat all flagged data as invalid. In the 1997 version, Procedure 2 stipulated that all flagged data was considered invalid. However, if the PM CEMS sends an alarm flag that the battery is low, or the protective lenses are getting dirty, or the vacuum is getting high, the data collected is still valid; it should not be automatically treated as invalid. During our field test, we occasionally got flags from the PM CEMS, but the data was not invalid just because we got a flag. If Procedure 2 is not changed, all data flags would produce invalid data. Therefore, a revision is needed.

In this revision, we are removing the requirement that all flagged data is automatically treated as invalid and stipulating that data must be investigated to determine its validity.

9. Alternative Calibration Relation Approaches

Section 6.5 of the previous proposal contained the following allowance for alternative calibration relation approaches:

Certain PM CEMS have technologies established on principles measuring PM concentration directly, whereas other technologies measure PM properties indirectly indicative of PM concentration. It has been shown empirically that a linear relationship can exist between these properties and PM concentration over a narrow range of concentrations, provided all variables remain essentially constant. However, if all variables affecting this relationship do not remain constant, then a linear relationship will probably not occur. Such is the case expected for facilities with PM emissions over a wide range of PM concentrations with certain process and air pollution control configurations. Other non-linear relations may provide a better fit to the calibration data than linear relations because the monitor's response is based on some measurable, and changing, property of the PM concentrations. These non-linear approaches may serve as improved approaches for defining the mathematical relation between the CEMS response and RM measured PM concentrations. The basis and advantage for developing and implementing such alternative approaches for determining compliance must be explicitly included in the calibration relation test report with supporting data demonstrating a better fit than a linear relation. Use of these alternative approaches is subject to approval by the Administrator.

Today's revised Procedure 2 contains no allowance. In Section 12.3(4) of PS–11, the following statement is made:

You may petition the Administrator for alternative solutions or sampling recommendations if the regression analysis presented in Section 12.3, paragraphs (1) through (3) does not achieve satisfactory correlation, confidence or tolerance intervals.

The alternative correlation approaches did not belong in Procedure 2 and were therefore moved to PS–11.

10. Arrangement of Paired Trains

In the previous proposal, arrangement of the paired trains was not specified. Section 10.1 of revised Procedure 2

contains stipulations for the arrangement of the paired trains including specific probe arrangements.

11. Precision of RM Data

In the previous proposal, precision of the RM data was not specified. Section 10.1(3) of revised Procedure 2 contains the precision specification.

Some of you commented that we needed to specify what level of imprecision in the RM data should exclude the data from the correlation data set. We therefore, propose to include criteria for precision of the paired RM measurements. Experience shows that with good operating practices and strict quality control the RSDs can be met at concentrations as low as about 1 mg/dscm.

12. Bias of RM Data

In the previous proposal, a provision to eliminate biased RM data was not specified. Section 10.1(4) of revised Procedure 2 proposes a bias specification. Systematic bias can exist between two sampling systems even when precision requirements are met. We have included these requirements for bias between the paired RM measurements found in the entire RM data set. We believe the precision and bias checks will ensure that only high quality RM data is used to develop your PM CEMS correlation relation.

13. Sample Volume Check

In the previous proposal, a sample volume check was not specified. Section 10.2(5) of revised Procedure 2 proposes to specify requirements for checking the sample volume.

A check that ensures the proper operation of the equipment that measures the sample volume is important. We are now proposing to require a daily sample volume check.

14. Sample Volume Check Performance Criteria

Since a sample volume check was not specified in the previous proposal, performance criteria for the sample volume check was not specified. Section 10.4(2) of revised Procedure 2 proposes the following performance criteria for the sample volume check:

> Your PM CEMS is out of control if sample volume check error exceeds 10 percent for five consecutive daily periods, or exceeds 20 percent for any one day.

Since we added a daily sample volume check, we included these performance specifications. These criteria are consistent with the daily zero and upscale drift check criteria (i.e., 2 times the SVA limit for five consecutive days or 4 times the SVA limit for any single day).

15. Relative Response Audit Performance Criterion

Since a relative response audit was not specified in the previous proposal, performance criteria for the RRA was not specified. Section 10.4(6) of revised Procedure 2 provides the following performance criteria for the RRA:

> At least two of the three sets of PM CEMS and RM measurements must fall within the same specified area on a graph of the correlation regression line as required for the RCA. If your PM CEMS fails to meet this RRA criterion, it is considered out of control.

Since we added a relative response audit, we included this performance specification. We believe that if 67 percent of the test runs (i.e., 2 out of 3) are within the 25 percent tolerance interval (which should include 75 percent of all future data points), then your PM CEMS correlation is still applicable and accurate. We believe the RRA is a cost effective means to ensure that your PM CEMS correlation remains applicable without the need to complete a costly RCA on an annual basis.

16. What To Do in the Event of a Failed RRA

No provision was included in the previous proposal. Now, Section 10.5(1)(ii) proposes:

If your PM CEMS failed an RRA, you must take corrective action until your PM CEMS passes the RRA criteria. If the RRA criteria cannot be achieved, you must perform an RCA.

Since we added the RRA, we need to tell you what to do if your PM CEMS fails to meet the performance criterion. We believe that if 2 out of the 3 test runs do not fall within the 25 percent tolerance interval, then your PM CEMS correlation may no longer be applicable. If your PM CEMS fails to meet the performance specification, we believe you should take corrective actions to correct any problems and repeat the RRA. However, if the RRA criteria cannot be attained, we believe you then need to conduct a full RCA using paired RM trains that meet the precision and bias criteria.

17. What To Do in the Event of a Failed RCA

No provision for a failed RCA was included in the previous version. Now, Section 10.6 proposes to include provisions you must follow if your PM CEMS fails the RCA.

The 1997 draft Procedure 2 did not tell you what to do if your PM CEMS failed to meet the RCA performance criterion. We believe the proposed steps are appropriate. Once your PM CEMS new correlation is developed, you start reporting PM emissions using the new equation. If a new correlation is developed according to step (2), the old correlation data is abandoned. In Germany and Denmark, when any additional RM testing is done, the new data is continually added to the correlation data set and a new correlation relation is calculated each time. However, they do not maintain the correlation performance criteria (i.e., confidence interval and tolerance interval limits) like we do, and therefore we chose not to follow the process used in Germany and Denmark.

III. Administrative Requirements

A. Docket

The docket is an organized and complete file of all information submitted or otherwise considered by us in the development of this proposed rulemaking. The principal purposes of the docket are: (1) to allow you to identify and locate documents so that you can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) (Clean Air Act Section 307(d)(7)(A)).

B. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we are required to judge whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this rule is not ''significant'' because none of the listed criteria apply to this action. Consequently, this action was

not submitted to OMB for review under Executive Order 12866.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires that we conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless we certify 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 proposed rule would not have a significant impact on a substantial number of small entities because no additional cost will be incurred by such entities because of the changes specified by the proposed rule. The requirements of the supplemental proposal reaffirm and clarify previously proposed performance specifications for continuous particulate matter emission monitoring systems. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires that we develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.''

''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

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. This proposed rule is a revision to a previously proposed rule governing the specifications, test procedures, and quality assurance requirements to be used by owners or operators of stationary sources for particulate matter continuous emission monitoring systems. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

F. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), we must prepare a budgetary impact statement to accompany any proposed rule, or any final rule for which a notice of proposed rulemaking was published, 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 in any one year. Under Section 205, if a budgetary impact statement is required under Section 202, we must select the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule, unless we explain why this alternative is not selected or the selection of this alternative is inconsistent with law. Section 203 requires us to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Section 204 requires us to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

We have determined that this proposed rule 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 in any one year. Rules establishing performance specifications and quality assurance requirements impose no costs independent from national emission standards which require their use, and such costs are fully reflected in the regulatory impact assessment for those emission standards. We have also determined that this proposed rule does not significantly or uniquely impact small governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

G. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), § 12(d), Public Law 104–113, generally requires federal agencies and departments to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like us to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

During this rulemaking, we searched for voluntary consensus standards that might be applicable. An International Organization for Standardization (ISO) standard, number 10155, Stationary source emissions—Automated monitoring of mass concentrations of particles—Performance characteristics, test methods and specifications, was applicable. ISO 10155 was followed for our first field evaluation of PM CEMS; however it was found to be inadequate to fulfill the performance specification needs for our compliance monitoring. Examples of areas where we believed ISO 10155 was inadequate are:

(1) The number of test runs for a correlation test, 9, was insufficient for a comprehensive statistical evaluation of the PM CEMS correlation.

(2) The PM concentration ranges required for a correlation test were too vague.

(3) The measurement location for the PM CEMS and RM were vague.

(4) Accuracy and precision criteria are not established for the RM.

(5) The correlation coefficient limit of greater than 0.95 was too stringent for most of the PM CEMS correlations we

evaluated. Also, ISO 10155 lacks quality assurance and quality control procedures. ISO 10155 was used as the starting point for development of PS–11.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that we determine (1) is ''economically significant'' as defined under Executive Order 12866, and (2) addresses an environmental health or safety risk that we believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because this does not establish an environmental standard intended to mitigate health or safety risks.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This 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. This proposed rule revises an existing proposed regulation which details the performance and design specifications for continuous emission monitoring systems. 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.

List of Subjects in 40 CFR Part 60

Environmental protection, Air Pollution Control, Continuous emission monitoring; Performance specification; Particulate matter.

Dated: November 29, 2001.

Christine Todd Whitman,

Administrator.

We propose that 40 CFR, part 60 be amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. Appendix B of Part 60 is amended by adding Performance Specification 11 to read as follows:

Appendix B of Part 60—Performance Specifications

* * * * *

Performance Specification 11—Specifications and Test

Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources

1.0 What Are the Purpose and Applicability of Performance Specification 11?

The purpose of Performance Specification 11 (PS–11) is to establish the initial installation and performance procedures that are required for evaluating the acceptability of a particulate matter (PM) continuous emissions monitoring system (CEMS). The intent of PS–11 is not to evaluate the ongoing performance of your PM CEMS over an extended period of time, nor does it identify specific calibration techniques and auxiliary procedures to assess CEMS performance. You will find procedures for evaluating the ongoing performance of your PM CEMS in Procedure 2 of Appendix F—Quality Assurance Requirements for Particulate Matter Continuous Monitoring Systems Used at Stationary Sources.

1.1 How does PS–11 apply to my PM CEMS? PS–11 applies to your PM CEMS if you are required by any provision of Title 40 of the CFR to install and operate PM CEMS.

1.2 When must I comply with PS–11? You must comply with PS–11 when directed by the applicable rule that required you to install and operate a PM CEMS. Also, you may be required to show compliance with PS–11 if changes at your source result in conditions which are unrepresentative of the previous correlation (e.g., changes in emission control system, significant changes in concentration of PM emitted, or feed inputs to the device).

1.3 What other monitoring is needed? To report your PM emissions in units of the emission standard, you may need to monitor additional parameters to correct the PM concentration reported by your PM CEMS. Your CEMS may include the components listed in paragraphs (1) through (3):

(1) A diluent monitor (i.e., O_2, CO_2, or other CEMS specified in the applicable regulation) which must meet its own performance specifications found in this appendix,

(2) Auxiliary monitoring equipment to allow measurement, determination, or input of the flue gas temperature, pressure, moisture content, and/or dry volume of stack effluent sampled, and

(3) An automatic sampling system.

The performance of your PM CEMS and the establishment of its correlation to manual measurements must be determined in units of mass concentration as measured by your PM CEMS (e.g., mg/acm or mg/dscm).

2.0 What Are the Basic Requirements of PS–11?

PS–11 requires you to perform initial installation and calibration procedures that confirm the acceptability of your CEMS when it is installed and placed into operation. You must develop a site specific correlation of your PM CEMS response against manual gravimetric RM measurements (including those made using EPA RMs 5 or 17).

2.1 What types of PM CEMS technologies are covered? Several different types of PM CEMS technologies (*e.g.,* light scattering, Beta attenuation, etc.) can be designed with in-situ or extractive sample gas handling systems. Each PM CEMS technology and sample gas handling technologies have certain site specific advantages. You must select and install a PM CEMS that is appropriate for the flue gas conditions at your source.

2.2 How is PS–11 different from other performance specifications? PS–11 is based on a technique of correlating PM CEMS response relative to emissions determined by the RM. This technique is called ''the correlation.'' This differs from CEMS used to measure gaseous pollutants which have available calibration gases of known concentration.

(1) Since the type and characteristics of PM vary from source to source, a single PM correlation, applicable to all sources, is not possible. When conducting the initial correlation test of your PM CEMS response to PM emissions determined by the RM, you must pay close attention to accuracy and details. Your PM CEMS must be operating properly. You must perform the manual method testing accurately, with attention to eliminating site-specific systemic errors. You must coordinate the timing of the manual method testing with the sampling cycle of your PM CEMS.

(2) You must complete a minimum of 15 manual PM tests. You must perform the manual testing over the full range of PM CEMS responses observed during the Correlation Test Planning Period.

2.3 How is the correlation data handled? You must carefully review your manual method data and your PM CEMS responses

to include only valid, high quality data. For the correlation, you must reduce and present the manual method data in terms of the measurement conditions reported by your PM CEMS. Then, you must correlate the manual method and PM CEMS data in terms of the output as received from the monitor (e.g., milliamps). At the median PM CEMS response, you must calculate the confidence interval and tolerance interval as a percentage of the applicable PM concentration emission limit and compare the confidence interval and tolerance interval percentages to the acceptance criteria. Also, you must calculate the correlation coefficient, independent of the applicable PM limit, and compare the correlation coefficient to the acceptance criterion.

Situations may arise where you will need two or more correlations. If you need multiple correlations, you need to collect sufficient data for each correlation.

2.4 How do I design my PM CEMS correlation program? When planning your PM CEMS correlation effort, you must address each of the items in paragraphs (1) through (8) to enhance the probability of success. You will find each of these elements further described in this performance specification or the applicable RM procedure.

(1) What type of PM CEMS should I select? You must select a PM CEMS that is most appropriate for your source with technical consideration for potential factors such as interferences, site specific configurations, installation location, flue gas conditions, PM concentration range and other PM characteristics. You can find guidance on which technology is best suited for specific situations in our report ''Current Knowledge of Particulate Matter (PM) Continuous Emission Monitoring'' (*see* references, section 16.5).

(2) Where should I install my PM CEMS? Your PM CEMS must be installed in a location that is most representative of PM emissions as determined by the RM such that the correlation between PM CEMS response and emissions determined by the RM will meet these performance specifications. Care must be taken in selecting a location and measurement point with minimum problems due to flow disturbances, cyclonic flow, and varying PM stratification. You should refer to Method 1 of this part for guidance (also see section 8.2). If you suspect that PM stratification may vary at the selected installation location, we recommend you perform a PM profile test to determine the magnitude of the variability in PM stratification. If the PM stratification varies by more than 10 percent, you must either choose another installation location or eliminate the stratification condition.

(3) How should I record my CEMS data? You must ensure that your data logger and PM CEMS have been properly programmed to accept and transfer status signals of valid monitor operation (e.g., flags for internal calibration, suspect data, or maintenance periods). You need to ensure that your PM CEMS and data logger are set up to collect and record all normal emission levels and excursions.

(4) How should I record CEMS maintenance and performance data? You must maintain a logbook for documenting CEMS maintenance and performance.

(5) What CEMS data should I review? You must review drift data daily to document proper operation. You must also ensure that any audit material is appropriate to the typical operating range of your PM CEMS.

(6) How long should I operate my PM CEMS before doing the initial correlation test? You must allow sufficient time for your PM CEMS to operate in a ''shakedown'' mode for you to become familiar with your PM CEMS.

(i) You must observe PM CEMS response over time during normal and varying process conditions. This will assure that your PM CEMS has been properly set up to operate at a range which is compatible with the concentrations and characteristics of PM emissions. You may use this information in establishing the operating conditions necessary to perform the correlations of PM CEMS data to manual method measurements over a wide operating range.

(ii) You must establish what type of process changes will influence flue gas PM concentration and resulting PM CEMS signal on a definable and repeatable basis. You may find the ''shakedown'' period useful to make adjustments to your planned approach for operating your PM CEMS at your source. For instance, you may change the measurement range or batch sampling period to something other than those you initially planned to use.

(7) How should I do the manual method testing? You must perform the manual method testing in accordance with specific rule requirements, coordinated closely with PM CEMS and process operations and then scrutinize the data according to the precision and bias criteria specified in Procedure 2, paragraph 10.1. You must use paired trains for the manual method testing. You must perform the manual method testing over a suitable PM concentration range as defined during the Correlation Test Planning Period. Since the manual testing for this correlation test is not for compliance reporting purposes, you may conduct the RM test runs for less than the typical 1-hour.

(8) What do I do with the manual RM data and PM CEMS data? You must complete each of the activities in paragraphs (i) through (v).

(i) Screen the manual RM data for validity (*e.g.,* isokinetics, leak checks), and quality assurance (*e.g.,* proper management to program goals) and quality control, (*e.g.,* outlier identification).

(ii) Screen your PM CEMS data for validity (*e.g.,* daily drift check requirements) and quality assurance (*e.g.,* flagged data).

(iii) Convert the manual test data into the same units of PM concentration as reported by your PM CEMS.

(iv) Calculate the polynomial and linear correlations and select the best fit correlation as specified in section 12.3.

(v) Calculate the results for the correlation coefficient, confidence interval, and tolerance interval for the complete set of CEMS/RM correlation data for comparison with the data acceptance criteria specified in section 13.2.

3.0 What Special Definitions Apply to PS–11?

3.1 ''Appropriate Measurement Range of your PM CEMS'' means a measurement range that is capable of recording readings over the complete range of your source's PM emission concentrations during routine operations. The appropriate range is determined during the Pretest Preparations as specified in section 8.4.

3.2 ''Appropriate Data Range for PM CEMS Correlation'' means the data range that reflects the full range of your source's PM emission concentrations recorded by your PM CEMS during the Correlation Test Planning Period or other normal operations as defined in the applicable regulations.

3.3 ''Batch Sampling'' means that gas is sampled on an intermittent basis and concentrated on a collection media before intermittent analysis and follow up reporting. Beta gauge PM CEMS are an example of batch sampling devices.

3.4 ''Confidence Interval (CI)'' means the statistical term for predicting, with 95 percent confidence, the bounds in which one would predict the correlation line to lie. Equations for calculating CI are provided in section 12.3(1)(ii), Equation 11–10, for the polynomial correlation and section 12.3(3)(ii), Equation 11–33, for the linear correlation. The CI as a percent of the emission limit value is calculated at the median PM CEMS response value.

3.5 ''Continuous Emission Monitoring System (CEMS)'' means all of the equipment required for determination of particulate matter mass concentration in units of the emission standard. The sample interface, pollutant monitor, diluent monitor, other auxiliary data monitor(s) and data recorder are the major subsystems of your CEMS.

3.6 ''Correlation'' means the primary mathematical relationship for correlating output from your PM CEMS (typically expressed in some arbitrary units, such as response to a milliamp electrical signal) to a particulate concentration, as determined by the RM. The correlation is expressed in the same units that your PM CEMS measures the PM concentration.

3.7 ''Correlation Coefficient (r)'' means a quantitative measure of association between your PM CEMS outputs and the RM measurements. Equations for calculating the r value are provided in section 12.3(1)(iv), Equation 11–22, for the polynomial correlation and section 12.3(3)(iv), Equation 11–36, for the linear correlation.

3.8 ''Cycle Time'' means the time required to complete one sampling, measurement, and reporting cycle. For a batch sampling PM CEMS, the cycle time would start when sample gas is first extracted from the stack/duct and end when the measurement of that batch sample is complete and a new result for that batch sample is produced on the data recorder.

3.9 ''Data Recorder'' means the portion of your CEMS that provides a permanent record of the monitor output in terms of response and status (flags). The data recorder may also provide automatic data reduction and CEMS control capabilities. (See section 6.6)

3.10 ''Diluent Monitor and Other Auxiliary Data Monitor(s) (if applicable)''

means that portion of your CEMS that provides the diluent gas concentration (such as O_2 or CO_2, as specified by the applicable regulations), temperature, pressure, and/or moisture content, and generates an output proportional to the diluent gas concentration or gas property.

3.11 ''Drift Check'' means a check of the difference in your PM CEMS output readings from the established reference value of a reference standard or procedure after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place. The procedures used to determine drift will be specific to the operating practices of your specific PM CEMS. A drift check includes both a zero drift check and an upscale drift check.

3.12 ''Flagged Data'' means data marked by your CEMS indicating that the response value(s) from one or more CEMS subsystems is suspect, invalid, or that your PM CEMS is not in source measurement operating mode.

3.13 ''Linear Correlation'' means a first order mathematical relationship between your PM CEMS and manual method PM concentration that is linear in form ($y = b_0 + b_1x$).

3.14 ''Paired Trains'' means two simultaneously conducted RM trains. (See section 8.6(1) and Procedure 2.)

3.15 ''Path CEMS'' means a CEMS that measures PM mass concentrations along a path across the stack or duct cross section.

3.16 ''Point CEMS'' means a CEMS that measures particulate matter mass concentrations either at a single point, or over a small fixed volume or path.

3.17 ''Polynomial Correlation'' means a second order equation used to define the relationship between your PM CEMS output and manual method PM concentration ($y = b_0 + b_1x + b_2x^2$).

3.18 ''Reference Method (RM)'' means the method defined in the applicable regulations but commonly is those methods collectively known as Methods 5 and 17 (for particulate), found in Appendix A of 40 CFR Part 60. Only the front half and dry filter catch portions of the RM can be correlated to your PM CEMS output.

3.19 ''Reference Standard'' means a reference material or procedure that produces a known and unchanging response when presented to the pollutant monitor portion of your CEMS. You must use these standards to evaluate the overall operation of your PM CEMS but not to develop a PM CEMS correlation.

3.20 ''Response Time'' means the time interval between the start of a step change in the system input and the time when the pollutant monitor output reaches 95 percent of the final value. (See sections 6.5 and 13.3 for procedures and acceptance criteria.)

3.21 ''Sample Interface'' means the portion of your CEMS used for one or more of the following: sample acquisition, sample delivery, sample conditioning, or protection of the monitor from the effects of the stack effluent.

3.22 ''Sample Volume Check'' means a check of the difference between your PM CEMS sample volume reading and the sample volume reference value.

3.23 ''Tolerance Interval (TI)'' means the interval with upper and lower limits, within a specified percentage of the future data population are contained with a given level of confidence as defined by the respective tolerance interval equations in section 12 of this performance specification. The TI is calculated as a percent of the emission limit value at the median PM CEMS response value.

3.24 ''Upscale Check Value'' means the expected response to a reference standard or procedure used to check the upscale response of your PM CEMS.

3.25 ''Upscale Drift (UD) Check'' means a check of the difference between your PM CEMS output reading and the upscale check value.

3.26 ''Zero Check Value'' means the expected response to a reference standard or procedure used to check the response of your PM CEMS to particulate free or low particulate concentration situations.

3.27 ''Zero Drift (ZD) Check'' means a check of the difference between your PM CEMS output reading and the zero check value.

3.28 ''Zero Point Correlation Value'' means a value added to PM CEMS correlation data to represent low or near zero PM concentration data. (See section 8.6 for rationale and procedures.)

4.0 Are There Any Potential Interferences for My PM CEMS?

Yes, condensible water droplets or condensible acid gas aerosols (i.e., those with condensation temperatures above those specified by the method) at the measurement location can be interferences for your PM CEMS if the necessary precautions are not met.

4.1 Where are interferences likely to occur? Interferences may develop if your CEMS is installed downstream of a wet air pollution control system or any other conditions that produce flue gases which, at your PM CEMS measurement point, normally or occasionally contain entrained water droplets or condensible salts before release to the atmosphere.

4.2 How do I deal with interferences? Your PM CEMS must extract and heat a representative sample of the flue gas for measurement to simulate results produced by the RM for conditions such as those described in section 4.1. Independent of your PM CEMS measurement technology and extractive technique, you must have a configuration simulating the RM to assure that:

(1) no formation of new particulate or deposition of particulate occurs in sample delivery from the stack or duct; and

(2) no condensate accumulates in the sample flow measurement apparatus.

4.3 What PM CEMS measurement technologies can I use? You must use a PM CEMS measurement technology that is free of interferences from any condensible constituent in the flue gas and in stack or duct flue gas conditions which normally or occasionally contain entrained water droplets or condensible salts.

5.0 What Do I Need To Know To Ensure the Safety of Persons Using PS–11?

People using the procedures required under PS–11 may be exposed to hazardous materials, operations, site conditions, and equipment. This performance specification does not purport to address all of the safety issues associated with its use. It is your responsibility to establish appropriate safety and health practices and determine the applicable regulatory limitations before performing these procedures. You must consult your CEMS users' manual and materials recommended by the RM for specific precautions to be taken.

6.0 What Equipment and Supplies Do I Need?

The different types of PM CEMS use different operating principles. You must select an appropriate PM CEMS based on your site specific configurations, flue gas conditions, and PM characteristics.

(1) Your PM CEMS must sample the stack effluent continuously or intermittently for batch sampling PM CEMS.

(2) You must ensure that the averaging time, the number of measurements in an average, the minimum data availability, and the averaging procedure for your CEMS conforms with those specified in the applicable emission regulation.

(3) Your PM CEMS must include the minimum equipment described in sections 6.1 through 6.7.

6.1 What equipment is needed for my PM CEMS's sample interface? Your PM CEMS's sample interface must be capable of delivering a representative sample of the flue gas to your PM CEMS. This subsystem may be required to heat the sample gas to avoid particulate deposition or moisture condensation, provide dilution air, perform other gas conditioning to prepare the sample for analysis, or measure the sample volume/flowrate.

(1) If your PM CEMS is installed downstream of a wet air pollution control system such that the flue gases normally or occasionally contain entrained water droplets, your PM CEMS must have equipment to extract and heat a representative sample of the flue gas for measurement so that the pollutant monitor portion of your CEMS measures only dry particulate. Heating must be sufficient to raise the temperature of the extracted flue gas to above the water condensation temperature and must be maintained at all times and at all points in the sample line from where the flue gas is extracted to, including the pollutant monitor and any sample flow measurement devices.

(2) You must consider the measured conditions of the sample gas stream to ensure that manual test data is converted into appropriately consistent units of PM concentration for the correlation calculations. Additionally, you must identify what, if any, additional auxiliary data continuous monitoring and handling systems are necessary in the conversion of your PM CEMS response into units of the PM standard.

(3) If your PM CEMS is an extractive type and your source's flue gas volumetric flow rate varies by more than 10 percent from nominal, your PM CEMS must maintain an isokinetic sampling rate (within 10 percent of true isokinetic). If your extractive type PM CEMS does not maintain an isokinetic

sampling rate, you must use actual site-specific data to prove to us, the State and/or local enforcement agency that isokinetic sampling is not necessary.

6.2 What type of equipment is needed for my PM CEMS? Your PM CEMS must be capable of providing an electronic output proportional to the PM concentration.

(1) Your PM CEMS must be able to perform zero and upscale drift checks. You may perform these checks manually, but performing these checks automatically is preferred.

(2) Your PM CEMS must also be capable of performing automatic diagnostic checks and sending instrument status signals (flags) to the data recorder.

(3) If your PM CEMS is an extractive type that measures the sample volume and uses the measured sample volume as part of calculating the output value, your PM CEMS must check the sample volume to verify the sample volume measuring equipment. You must do this sample volume check at the normal sampling rate of your PM CEMS.

6.3 What is the appropriate measurement range for my PM CEMS? Your PM CEMS must be initially set up to measure over the expected range of your source's PM emission concentrations during routine operations. This will allow your PM CEMS to detect and record significant high PM concentrations encountered during the Correlation Test Planning Period. You may change the measurement range to a more appropriate range during the Correlation Test Planning Period based on your findings.

6.4 What if my PM CEMS does automatic range switching? Your PM CEMS may be equipped to perform automatic range switching so that it is operating in a range most sensitive to the detected concentrations. If your PM CEMS does automatic range switching, you must appropriately configure the data recorder to adequately handle the recording of data values being recorded in multiple ranges during range switching intervals.

6.5 What averaging time and sample intervals should be used? Your CEMS must sample the stack effluent such that the averaging time, the number of measurements in an average, the minimum sampling time, and the averaging procedure for reporting and determining compliance conform with those specified in the applicable regulation. Your PM CEMS must be designed to meet the specified response time and cycle time established in this Performance Specification. (*See* section 13.3.)

6.6 What type of equipment is needed for my data recorder? Your CEMS data recorder must be able to accept and record electronic signals from all the monitors.

(1) Your data recorder must record the signals from your PM CEMS that are proportional to particulate mass concentrations. If your PM CEMS uses multiple ranges, your data recorder must identify what range the measurement was made in and provide range adjusted results.

(2) Your data recorder must accept and record monitor status signals (flagged data).

(3) Your data recorder must accept signals from auxiliary data monitors, as appropriate.

6.7 What other equipment and supplies might I need? You may need other supporting equipment as defined by the applicable RM(s) (see section 7) or as specified by your CEMS manufacturer.

7.0 What Reagents and Standards Do I Need?

7.1 You will need reference-audit rods, -audit wedges, foils, optical filters or other technology-appropriate reference media that are provided by your PM CEMS manufacturer. You must use these reference media for the quarterly QA/QC audits and for daily drift checks (i.e., to measure drift or response) of your PM CEMS. These need not be certified but must be documented by the manufacturer to give results that are consistent, repeatable and reliable.

7.2 You may need other reagents and standards required by the applicable RM(s).

8.0 What Performance Specification Test Procedure Do I Follow?

You must complete each of the activities in sections 8.1 through 8.8 for your performance specification test.

8.1 What is the appropriate equipment selection and setup? You must select a PM CEMS that is most appropriate for your source, giving consideration to potential factors such as flue gas conditions, interferences, site specific configuration, installation location, PM concentration range and other PM characteristics. Your PM CEMS must meet the equipment specifications of section 6.1.

(1) You must select a PM CEMS that is appropriate for the flue gas conditions at your source. If your source contains entrained water droplets, your PM CEMS will require a sample delivery and conditioning system that is capable of extracting and heating a representative sample.

(i) Your PM CEMS must maintain the sample at a temperature sufficient to prevent moisture condensation in the sample line before analysis of PM.

(ii) If condensible PM is an issue, your PM CEMS must maintain the sample gas temperature at the same temperature as the RM filter.

(iii) Your PM CEMS must avoid condensation in the sample flow rate measurement lines.

(2) Some PM CEMS do not have a wide measurement range capability. Therefore, you must select a PM CEMS that is capable of measuring the full range of PM concentrations expected from your source from normal levels through the emission limit concentration.

(3) Some PM CEMS are sensitive to particle size changes, water droplets in the gas stream, particle charge, and stack gas velocity changes, etc. Therefore, you must select a PM CEMS appropriate for your source's PM characteristics.

(4) You must set up your CEMS to operate in accordance with the manufacturer's recommendations.

(5) You must consult your PM CEMS vendor to obtain basic recommendations on the instrument capabilities and setup configuration. You are ultimately responsible for setup and operation of your PM CEMS.

8.2 Where do I install my PM CEMS? You must install your PM CEMS at an accessible location downstream of all pollution control equipment. You must perform your PM CEMS concentration measurements from a location considered most representative, or be able to provide data that can be corrected to be representative of the total PM emissions as determined by the manual RM.

(1) Your site specific correlation developed during the initial correlation testing must relate specific PM CEMS responses to integrated particulate concentrations.

(2) We may require you to relocate your CEMS if the cause of failure to meet the correlation criteria is determined to be the measurement location and a satisfactory correction technique cannot be established.

(3) You must select a measurement location that minimizes problems due to flow disturbances, cyclonic flow, and varying PM stratification (refer to Method 1 for guidance).

(4) If you plan to achieve higher emissions, for correlation test purposes, by adjusting the performance of the air pollution control device (per section 8.6(5)(i)) or by installing a means to bypass part of the flue gas around the control device, you must locate your PM CEMS measurement (and manual RM measurement) location well downstream of the control device or bypass (e.g., downstream of the induced draft fan), in order to minimize PM stratification that may be created in these cases.

8.3 How do I select the manual RM measurement location and traverse points? You must follow EPA Method 1 for identifying manual RM traverse points. Ideally, you should perform your manual measurements at locations where the 8 and 2 flow disturbance criteria are met. Where necessary, you may conduct testing at a location that is 2 diameters downstream and 0.5 diameters upstream of flow disturbances. If your location does not meet the minimum downstream and upstream requirements, you must obtain approval from us to test at your location.

8.4 What are my pretest preparation steps? You must install your CEMS and prepare the RM test site according to the specifications in sections 8.2 and 8.3. You must prepare your CEMS for operation according to the manufacturer's written instructions.

(1) After completing the initial field installation, you must operate your PM CEMS according to the manufacturer's instructions for a shakedown period. Except during times of instrument zero and upscale drift checks, your CEMS must analyze the effluent gas for PM and produce a permanent record of your PM CEMS output.

(i) You must conduct daily checks (zero and upscale drift and sample volume, as appropriate); and, when any check exceeds the daily specification (see section 13.1), make adjustments and perform any necessary maintenance to ensure reliable operation. Your data recorder must reflect these checks and adjustments.

(ii) If the shakedown period is interrupted because of source breakdown, you must continue the shakedown period following resumption of source operation. If the shakedown period is interrupted because of monitor failure, you must continue the shakedown period when the monitor becomes operational.

(iii) The objective of the shakedown period is for you to become familiar with your PM CEMS and its routine operation for providing reliable data.

(iv) Therefore, you must continue the shakedown until you are confident that your PM CEMS is operating within the manufacturer's specifications.

(2) After completing the shakedown period, you must operate your CEMS over a Correlation Test Planning Period of sufficient duration to identify the full range of operating conditions and PM emissions to be used in your PM CEMS correlation test. During the Correlation Test Planning Period you must produce a permanent record of 15-minute average PM CEMS responses.

(i) During the Correlation Test Planning Period you must operate the process and air pollution control equipment in their normal set of operating conditions.

(ii) Your data recorder must record PM CEMS response during the full range of routine process operating conditions.

(iii) You must establish the relationships between operating conditions and PM CEMS response, especially those conditions that produce the highest PM CEMS response over 15-minute averaging periods, and the lowest PM CEMS response as well. The objective of this is for you to be able to reproduce the conditions for purposes of the actual correlation testing discussed in section 8.6.

(iv) You must set the response range of your PM CEMS for the subsequent correlation testing.

(3) You must set the response range of your PM CEMS such that its output is within 50 to 60 percent of its maximum output (*e.g.,* 12 to 13.6 mA on a 4 to 20 mA output) when your source is operating at the conditions that were previously observed to produce the highest PM CEMS output. But, the response range must be set such that no 15-minute average equals your PM CEMS maximum output (*e.g.,* 20 mA). In some cases, you may desire to set the response range of your PM CEMS such that its output is 50 to 60 percent of its maximum output (*e.g.,* 12 to 13.6 mA on a 4 to 20 mA output) when your source is operating at its PM emission limit. You may do this by perturbing operation of the air pollution control equipment or bypassing part of the flue gas around the control equipment in order to create PM emissions at the emission limit.

(4) We recommend that you perform preliminary manual RM testing after the Correlation Test Planning Period. During this preliminary testing, you would measure the PM emission concentration corresponding to the highest PM CEMS response observed during the full range of normal operation, or when perturbing or bypassing the control equipment.

(5) During the last seven days of the Correlation Test Planning Period, and after the monitor response range has been set, you must perform the 7-day zero and upscale drift test (see section 8.5).

(6) You cannot change the response range of the monitor once the response range has been set, and the drift test successfully completed.

8.5 How do I perform the 7-day drift test? You must check the zero (or low level value between 0 and 20 percent of the response range of the instrument) and upscale (between 50 and 100 percent of the instrument's response range) drift. You must perform this check at least once daily over 7 consecutive days. Your PM CEMS must quantify and record the zero and upscale measurements and the time of the measurements. If you make automatic or manual adjustments to your PM CEMS zero and upscale settings, you must conduct the drift test immediately before these adjustments, or conduct it in such a way that you can determine the amount of drift. You will find the calculation procedures for drift in section 12.1 and the acceptance criteria for allowable drift in section 13.1.

(1) What is the purpose of 7-day drift tests? The 7-day drift tests validate the internal performance of your PM CEMS. Another purpose of the 7-day drift measurements is to verify that your CEMS response remains consistent with the responses recorded during the development of the initial correlation and to determine whether your PM CEMS is out of control during day to day operation as specified in section 13.1.

(2) How do I do the 7-day drift testing? You must determine the magnitude of the drift once each day, at 24-hour intervals), for 7 consecutive days while your source is operating normally.

(i) You must conduct the 7-day drift test at the two points specified in section 8.5. You may perform the 7-day drift tests automatically or manually by introducing to your PM CEMS suitable reference standards (these need not be certified) or procedures.

(ii) You must record your PM CEMS zero and upscale response and evaluate them against the zero check value and upscale check value.

(iii) You must conduct the 7-day drift test near the end of the Correlation Test Planning Period. A valid 7-day drift test must be completed before attempting the correlation test.

8.6 How do I conduct my PM CEMS correlation test? You must conduct the correlation test according to the procedure given in paragraphs (2) through (6) while your source is operating at the conditions you observed and documented during the Correlation Test Planning Period discussed in section 8.4(2). If you need multiple correlations, you must conduct sufficient testing and collect at least 15 pairs of RM and PM CEMS data for calculating each separate correlation.

(1) You must use the RM for particulate matter (usually Methods 5, 5i, or 17) that is prescribed by the applicable regulations. You may need to perform other RMs or performance specifications (*e.g.,* Method 3 for oxygen, Method 4 for moisture, etc.) depending on the units in which your PM CEMS reports PM concentration.

Note: You may use test runs that are shorter than 60 minutes in duration (*e.g.,* 20 or 30 minutes). You may perform your PM CEMS correlation tests during new source performance standards performance tests or other compliance tests subject to the Clean Air Act or other statutes, such as the Resource Conservation and Recovery Act. In these cases, your RM results obtained during the PM CEMS correlation test may be used to determine compliance as long as your source and the test conditions are consistent with the applicable regulations.

(i) You must use paired RM trains when collecting manual PM data. You use results of the paired trains to identify and screen the RM data for imprecision and bias.

(ii) During all paired train testing, you must eliminate from the data set used to develop a PM CEMS correlation any pair of data that do not meet the precision criteria specified in Procedure 2, paragraph 10.1(3).

(iii) You must test the valid data set for bias according to Procedure 2, section 10.1(4)(i). You may not use biased data in developing your PM CEMS correlation. You must identify and correct the source of the bias before repeating the manual testing program.

(iv) You must correct the RM results to units consistent with the results of your PM CEMS measurements. For example, if your PM CEMS measures and reports PM emissions in the units of mass per actual volume of stack gas, you must correct your RM results to those units (*e.g.,* mg/acm). If your PM CEMS extracts and heats the sample gas to eliminate water droplets, then measures and reports PM emissions under those actual conditions, you must correct your RM results to those same conditions (*e.g.,* mg/acm at 160°C).

(2) During each test run, you must coordinate process operations, RM sampling, and PM CEMS operations. For example, you must assure that: (1) The process is operating at the targeted conditions, (2) both RM trains are sampling simultaneously, and (3) your PM CEMS and data logger are properly operating.

(i) You must coordinate the start and stop times of each run between the RM sampling and PM CEMS operation. For a batch sampling PM CEMS, you must start the RM at the same time as your PM CEMS sampling.

(ii) You must note the times for port changes on the data sheets so that you can adjust your PM CEMS data accordingly, if necessary.

(iii) You must properly align the time periods for your PM CEMS and your RM measurements to account for your PM CEMS response time.

(3) You must conduct a minimum of 15 valid runs each consisting of simultaneous PM CEMS and RM measurements sets.

(i) You may conduct more than 15 sets of CEMS and RM measurement sets. If you choose this option, you may reject certain test results so long as the total number of valid test results you use to determine the correlation is greater than or equal to 15.

(ii) You must report all data, including the rejected data.

(iii) If you reject data, the basis for rejecting data must be explicitly stated in: (1) The RM, (2) this Performance Specification or Procedure 2, or (3) your QA plan.

(iv) If you use more than 15 runs for the correlation test, each emissions concentration level described in section 8.6(4) must contain no fewer than 20 percent of the total number of runs.

(4) Simultaneous PM CEMS and RM measurements must be performed in a

manner to ensure that the range of data for your PM CEMS's correlation is maximized. The range of data must be identified during the Correlation Test Planning Period. You must first attempt to maximize your correlation range by following paragraphs (i) through (iv). If you cannot obtain the three levels as described in (i) through (iv), then you must use the procedure in section (5).

(i) You must attempt to obtain the three different levels of PM mass concentration by varying process or PM control device conditions, or bypassing part of the flue gas around the control equipment.

(ii) The three PM concentration levels you use in the correlation tests must be distributed over the complete operating range experienced by your source.

(iii) At least 20 percent of the minimum 15 measured data points you use must be contained in each of the following levels as determined by your PM CEMS during the Correlation Test Planning Period:

- *Level 1:* From no PM (zero concentration) emissions to 50 percent of the maximum PM concentration;
- *Level 2:* 25 to 75 percent of the maximum PM concentration; and
- *Level 3:* 50 to 100 percent of the maximum PM concentration.

(iv) Although the above levels overlap, you may only apply individual run data to one level.

(5) If you cannot obtain three distinct levels of PM concentration as described, you must perform correlation testing at whatever range of PM concentrations your PM CEMS recorded during the Correlation Test Planning Period. To ensure that the range of data for your PM CEMS's correlation is maximized, you must follow one or more of the steps in paragraphs (i) through (iii).

(i) If you have an extractive PM CEMS, introduce zero air or filtered ambient air into your PM CEMS sample line to obtain instrument response for a particulate free flue gas.

(ii) To obtain zero point data, perform manual RM measurements when the flue gas is free of particulate emissions or contains very low PM concentration (*e.g.*, when your process is not operating but the fans are operating or your source is combusting only natural gas).

(iii) If none of the steps in paragraphs (ii) or (iii) are possible, you must assume what the monitor response should be when no PM is in the flue gas (*e.g.,* 4 mA = 0 mg/acm).

8.7 What do I do with my PM CEMS initial correlation test data? You must calculate and report the results of the correlation testing as cited in section 12. You must include all data sheets, calculations, charts (records of PM CEMS responses), process data records including PM control equipment operating parameters, and manufacturer's reference media certifications necessary to confirm that your PM CEMS met the performance specifications. In addition, you must:

(1) Determine the integrated (arithmetic average) PM CEMS output over each RM test period.

(2) adjust your PM CEMS outputs and RM test data to the same clock time (considering response time of your PM CEMS). (3) confirm that the RM results are consistent with your PM CEMS response in terms of, where applicable, moisture, temperature, pressure, and diluent concentrations.

(4) determine whether any of the RM test results do not meet the test method criteria or the precision and bias criteria in Procedure 2; and

(5) calculate the correlation coefficient, confidence interval, and tolerance interval for the complete set of CEMS/RM correlation data using the procedures in section 12.0.

8.8 What is the limitation on the range of my PM CEMS correlation? Data you collect during the correlation testing should be representative of the full range of normal operating conditions at your source as observed during the Correlation Test Planning Period. You must use these data to develop the correlation, even though this may in some situations consist of data over a narrow range of PM concentration and PM CEMS response that are well below your source's PM emission limit.

(1) If your source later generates three consecutive hourly averages greater than 125 percent of the highest PM CEMS response (*e.g.,* mA reading) used for the correlation curve, you must collect additional correlation data at the higher PM CEMS response unless we, the State and or local enforcement agency determine that repeating the condition is not appropriate. In doing so, you must conduct three additional test runs at the higher response and revise the correlation equation within 30 days after the occurrence of the three consecutive hourly averages. You must use resulting new data along with the previous data to calculate a revised correlation equation.

9.0 What Quality Control Measures Are Required?

Quality control components are presented in 40 CFR part 60, Appendix F, Procedure 2.

10.0 What Calibration and Standardization Procedures Must I Perform? [Reserved]

11.0 What Analytical Procedures Apply to This Procedure?

Specific analytical procedures are outlined in the applicable RM(s).

12.0 What Calculations and Data Analysis Are Needed?

You must determine the primary relationship for correlating output from your PM CEMS to a particulate concentration, typically in units of mg/m^3 of flue gas, using the calculations and data analysis process in sections 12.2 and 12.3. You develop the correlation by performing an appropriate regression analysis between your PM CEMS response and your RM data.

12.1 How do I calculate upscale drift and zero drift? To establish reliability of your PM CEMS by achieving specific drift check requirements, you must determine the difference in your PM CEMS output readings from the established reference values (zero and upscale check values) after a stated period of operation during which you performed no unscheduled maintenance, repair, or adjustment.

(1) Calculate the Upscale Drift (UD) using Equation 11–1:

$$UD = \frac{|R_{CEM} - R_V|}{R_V} \times 100 \qquad \text{(Eq. 11-1)}$$

Where:

UD = The upscale (high level) drift of your PM CEMS in percent,

R_{CEM} = The measured PM CEMS response of the upscale reference standard, and

R_V = The pre-established numerical value of the upscale reference standard.

(2) Calculate the Zero Drift (ZD) using Equation 11–2:

$$ZD = \frac{|R_{CEM} - R_L|}{R_V} \times 100 \qquad \text{(Eq. 11-2)}$$

Where:

ZD = The zero (low level) drift of your PM CEMS in percent.

R_{CEM} = The measured PM CEMS response of the zero reference standard, and

R_L = The pre-established numerical value of the zero reference standard.

R_V = The pre-established numerical value of the upscale reference standard.

(3) Summarize the results on a data sheet similar to that shown in Table 11–3 (see section 18).

12.2 How do I prepare my regression analysis? You must couple the measured PM concentration, y, in the appropriate units, with an average PM CEMS response, x, over corresponding time periods. You must complete your PM CEMS correlation calculations using data deemed acceptable by quality control procedures identified in 40 CFR 60 Appendix F, Procedure 2.

(1) You must evaluate all flagged or suspect data produced during measurement periods and determine whether they should be excluded from your PM CEMS's average.

(2) You must adjust the RM PM concentrations to the units of your PM CEMS measurement conditions. The conditions of your PM CEMS measurement are monitor specific. You must obtain from your PM CEMS's vendor the unit of measure for your PM CEMS.

(i) If your sample gas contains entrained water droplets, you must calculate moisture by one of the following methods, as further clarified in subsections (ii) and (iii) below: (1) determined from the impinger analysis, or (2) calculated from a psychrometric chart based on assumed saturation conditions.

(ii) If your PM CEMS measures PM at non-actual conditions (e.g., dry standard conditions), you must use the lower of the two calculated moisture values.

(iii) If your PM CEMS measures PM at an actual stack condition, you must use the measured moisture content from impingers and not moisture calculated based on saturated conditions when adjusting your RM PM data to PM CEMS conditions.

12.3 How do I determine my PM CEMS correlation? To predict PM concentration from PM CEMS responses, you must use the calculation method of least squares presented in paragraphs (1) through (4). This method minimizes the vertical segments from the data points to the fitted correlation. You must investigate the correlations in the order they are presented: polynomial (i.e., second

order), logarithmic, and linear (i.e., first order). Finally, your correlation must meet the criteria presented in section 13.

(1) Calculate the coefficients of the polynomial correlation and confidence and tolerance intervals using Equations 11–3 through 11–23.

(i) Calculate the polynomial correlation of Equation 11–3 using Equations 11–4 through 11–9. A least-squares polynomial regression provides the best fit coefficients b_0, b_1, and b_2 for your PM CEMS correlation:

$$\hat{y} = b_0 + b_1 x + b_2 x^2 \qquad \text{(Eq. 11-3)}$$

The coefficients b_0, b_1, and b_2 are determined from the solution to the matrix equation Ab=B

Where:

$$A = \begin{bmatrix} n & S_1 & S_2 \\ S_1 & S_2 & S_3 \\ S_2 & S_3 & S_4 \end{bmatrix}, \qquad b = \begin{bmatrix} b_0 \\ b_1 \\ b_2 \end{bmatrix}, \qquad B = \begin{bmatrix} S_5 \\ S_6 \\ S_7 \end{bmatrix}.$$

and

$$S_1 = \sum_{i=1}^{n}(x_1),\ S_2 = \sum_{i=1}^{n}\left(x_1^2\right),\ S_3 = \sum_{i=1}^{n}\left(x_1^3\right),\ S_4 = \sum_{i=1}^{n}\left(x_1^4\right), \qquad \text{(Eq. 11-4)}$$

$$S_5 = \sum_{i=1}^{n} y_1,\ S_6 = \sum_{i=1}^{n}\left(x_i y_i\right),\ S_7 = \sum_{i=1}^{n}\left(x_1^2 y_i\right). \qquad \text{(Eq. 11-5)}$$

The solutions to b_0, b_1, and b_2 are:

$$b_0 = \frac{\left(S_5 \cdot S_2 \cdot S_4 + S_1 \cdot S_3 \cdot S_7 + S_2 \cdot S_6 \cdot S_3 - S_7 \cdot S_2 \cdot S_2 - S_3 \cdot S_3 \cdot S_5 - S_4 \cdot S_6 \cdot S_1\right)}{\det A} \qquad \text{(Eq. 11-6)}$$

$$B_1 = \frac{\left(n \cdot S_6 \cdot S_4 + S_5 \cdot S_3 \cdot S_2 + S_2 \cdot S_1 \cdot S_7 - S_2 \cdot S_6 \cdot S_2 - S_7 \cdot S_3 \cdot n - S_4 \cdot S_1 \cdot S_5\right)}{\det A} \qquad \text{(Eq. 11-7)}$$

$$b_2 = \frac{\left(n \cdot S_2 \cdot S_7 + S_1 \cdot S_6 \cdot S_2 + S_5 \cdot S_1 \cdot S_3 - S_2 \cdot S_2 \cdot S_5 - S_3 \cdot S_6 \cdot n - S_7 \cdot S_1 \cdot S_1\right)}{\det A} \qquad \text{(Eq. 11-8)}$$

Where:

$$\det A = n \cdot S_2 \cdot S_4 - S_2 \cdot S_2 + \cdot S_1 \cdot S_3 \cdot S_2 - S_3 \cdot S_3 \cdot n + S_2 \cdot S_1 \cdot S_3 - S_4 \cdot S_1 \cdot S_1 \qquad \text{(Eq. 11-9)}$$

(ii) Calculate the two-sided 95 percent confidence interval given by Equation 11–10 for the polynomial regression using Equations 11–11 through 11–16. For any positive value of x, the two-sided confidence interval is given by:

$$\left(y_{c-lower}, y_{c-upper}\right) = \hat{y} \pm t_f \cdot S_p \sqrt{\Delta} \qquad \text{(Eq. 11-10)}$$

Where:

f=n – 3,

Use the t factors listed in Table 1.

Equation 11–10 is simplified to:

$$\left(y_{c-lower}, y_{c-upper}\right) = \hat{y} \pm CI \qquad \text{(Eq. 11-11)}$$

Calculate the confidence interval percent (CI %) by Equation 11–12:

$$CI\% = \frac{CI}{EL} \cdot 100\% \qquad \text{(Eq. 11-12)}$$

Where:

CI = The confidence interval at the median x value

EL = PM emission limit, as described in section 13.2.

Determine the scatter or deviation of y values about the polynomial regression curve (correlation) S_P using Equations 11–13 through 11–16:

$$S_p = \sqrt{\frac{1}{n-3}\sum_{i=1}^{n}\left(\hat{y}_i - y_i\right)^2}, \text{ and} \qquad \text{(Eq. 11-13)}$$

$$\Delta = C_0 + 2C_1x + \left(2C_2 + C_3\right)x^2 + 2C_4x^3 + C_5x^4. \qquad \text{(Eq. 11-14)}$$

Calculate the C coefficients using Equation 11–15.

$$C_0 = \frac{\left(S_2 \cdot S_4 - S_3^2\right)}{D}, C_1 = \frac{\left(S_3 \cdot S_2 - S_1 \cdot S_4\right)}{D}, C_2 = \frac{\left(S_1 \cdot S_3 - S_2^2\right)}{D}, C_3 = \frac{\left(nS_4 - S_2^2\right)}{D}, C_4 = \frac{\left(S_1 \cdot S_2 - nS_3\right)}{D} C_5 = \frac{\left(nS_2 - S_1^2\right)}{D} \qquad \text{(Eq. 11-15)}$$

Where:

$$D = n\left(S_2 \cdot S_4 - S_3^2\right) + S_1\left(S_3 \cdot S_2 - S_1 \cdot S_4\right) + S_2\left(S_1 \cdot S_3 - S_2^2\right) \qquad \text{(Eq. 11-16)}$$

(iii) Calculate the two-sided tolerance interval given by Equation 11–17 for the polynomial regression using Equations 11–18 through 11–21. For any positive value of x, the two-sided tolerance interval is given by:

$$\left(y_{t-lower}, y_{t-upper}\right) = \hat{y} \pm k_T \cdot S_p, \qquad \text{(Eq. 11-17)}$$

Where:

$$k_T = u_{n'} \cdot v_f \qquad \text{(Eq. 11–18)}$$

with f=n − 3, and

$$n' = \frac{1}{\Delta} \qquad \text{(Eq. 11-19)}$$

with $n' \geq 2$.

Use the v_f and $u_{n'}$, values in Table 1.

Equation 11–17 is simplified to:

$$\left(y_{t-lower}, y_{t-upper}\right) = \hat{y} \pm TI \qquad \text{(Eq. 11-20)}$$

Calculate the tolerance interval percent (TI %) using Equation 11–21:

$$TI\% = \frac{TI}{EL} \cdot 100\% \qquad \text{(Eq. 11-21)}$$

where:

TI = The tolerance interval at the median x value

EL = PM emission limit, as described in section 13.2.

(iv) Calculate the polynomial correlation coefficient, r, from:

$$r = \sqrt{1 - \frac{S_P^2}{S_y^2}} \qquad \text{(Eq. 11-22)}$$

Where:

$$S_y = \sqrt{\frac{\sum_{i=1}^{n}\left(y_1 - \bar{y}\right)^2}{n-1}} \qquad \text{(Eq. 11-23)}$$

(v) Any correlation you develop must predict an increased PM concentration with an increased PM CEMS response within the extrapolated range. The sign of the polynomial slope must not change within the extrapolated range of PM CEMS responses. To meet this criterion, the polynomial minimum or maximum must exist outside the expanded data range. The minimum or maximum is the point where the slope of the polynomial curve equals zero. You must calculate the minimum or maximum using Equation 11–24.

$$\text{maximum or minimum} = -\frac{b_1}{2b_2} \qquad \text{(Eq. 11-24)}$$

If $b_2 > 0$, your polynomial curve has a minimum. The minimum must exist outside and below the range of PM CEMS responses collected during the correlation period.

$$-\frac{b_1}{2b_2} < x_i \qquad \text{(Eq. 11-25)}$$

If the relationship in Equation 11–25 is true and the correlation criteria described in section 13.2 are within the acceptable limits, you must proceed to the linear analysis presented in section 12.3(3).

If $b_2 < 0$ your polynomial curve has a maximum. The maximum must be above 125 percent of the highest PM CEMS response during the correlation test.

$$-\frac{b_1}{2b_2} > \text{Highest Extrapolated CEMS Response Point} \qquad \text{(Eq. 11-26)}$$

If the relationship in Equation 11–26 is true and the correlation criteria described in section 13.2 are within the acceptable limits, you must proceed to the linear analysis presented in section 12.3(3).

(2) If the minimum or maximum for the polynomial correlation exists outside the range of PM CEMS responses during the correlation test or the polynomial correlation criteria are not satisfactory, you must also investigate the logarithmic correlation. Perform a logarithmic transformation of each average PM CEMS response (x values). You can use any number greater than 1 for the base of the logarithm, since the same correlation coefficient will result. You must apply all the procedures and equations outlined in the linear model in section 12.3(3) after logarithmic transformation of the x values has occurred.

You must evaluate the logarithmic correlation at the criteria presented in section 13.2. If all acceptance criteria are achieved, you discontinue further analysis and report all PM CEMS responses using the logarithmic curve.

(3) If the minimum or maximum as defined in Equation 11–24 exists inside the range of PM CEMS responses obtain during the correlation test, you must not use the polynomial correlation, and you must perform the following linear regression. Your

PM CEMS data appear on the x axis, and the RM data appear on the y axis.

(i) Calculate the linear regression, which gives the predicted mass emission $\hat{y}$ based on your PM CEMS response x, given by Equation 11–27, using Equations 11–28 through 11–32.

$$\hat{y} = b_0 + b_1 x \qquad \text{(Eq. 11-27)}$$

Where:

$$b_1 = \frac{S_{xy}}{S_{xx}} \qquad \text{(Eq. 11-28)}$$

and

$$b_0 = \bar{y} - b_1 \cdot \bar{x} \qquad \text{(Eq. 11-29)}$$

Calculate the mean values of the x and y data sets using Equation 11–30

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i, \bar{y} = \frac{1}{n} = \sum_{i=1}^{n} y_i \qquad \text{(Eq. 11-30)}$$

where x_i and y_i are the absolute values of the individual measurements and n is the number of data points. Calculate the values of S_{xx}, S_{yy}, and S_{xy} using Equation 11–31,

$$S_{xx} = \sum_{i=1}^{n}(x_1 - \bar{x})^2, S_{yy} = \sum_{i=1}^{n}(y_1 - \bar{y})^2, S_{xy} = \sum_{i=1}^{n}(x_1 - \bar{x})(y_i - \bar{y}) \qquad \text{(Eq. 11-31)}$$

and then calculate the scatter or deviation of y values about the regression line (correlation), S_L, using Equation 11–32.

$$S_L = \sqrt{\frac{1}{n-2}\sum_{i=1}^{n}(\hat{y}_i - y_i)^2} \qquad \text{(Eq. 11-32)}$$

(ii) Calculate the two-sided $_{100\ (1-a)\%}$ confidence interval, $y_{c\text{-lower}}$ $y_{c\text{-upper}}$, for the predicted concentration $\hat{y}$ at point x, using Equation 11–33. Then, calculate the confidence interval as a percent of the emission limit at the median x value.

$$(y_{c-\text{lower}}, y_{c-\text{upper}}) = \hat{y} \pm t_{f,1-a/2} \cdot S_L \sqrt{\frac{1}{n} + \frac{(x-\bar{x})^2}{S_{xx}}}, \text{ with } f = n-2 \qquad \text{(Eq. 11-33)}$$

(iii) Calculate the two-sided tolerance interval, $y_{t\text{-lower}}$ $y_{t\text{-upper}}$, for a future observation at point x, given by Equation 11–34 for the linear regression using Equations 11–35 and 11–36.

$$(y_{t-\text{lower}}, y_{t-\text{upper}}) = \hat{y} \pm k_t \cdot s_L \qquad \text{(Eq. 11-34)}$$

$$k_T = u_{n'} \cdot v_f \text{ and } f = n-2 \qquad \text{(Eq. 11-35)}$$

$$n' = \frac{n}{1 + \frac{n \cdot (x-\bar{x})^2}{S_{xx}}}, n' \geq 2 \qquad \text{(Eq. 11-36)}$$

Determine the tolerance factor $u_{n'}$ for 75 percent by first calculating n′ and rounding to the nearest whole number. If the calculated $u_{n'}$ is less than 2, n′ = 2. Use the $u_{n'}$ values as a function on n′ and the v and t factors from Table 1. Then, calculate the tolerance interval as a percent of the emission limit at the median x value.

(iv) Calculate the linear correlation coefficient, r, using Equation 11–37.

$$r = \sqrt{1 - \frac{S_L^2}{S_y^2}} \qquad \text{(Eq. 11-37)}$$

Where:

S_y was defined by Equation 11–23.

(v) After calculating the polynomial, logarithmic (if needed), and linear correlations, you must determine which correlation produces the best fit to the correlation data. This test to determine if the fit using a polynomial correlation offers a statistically significant improvement over the linear correlation is shown in Equation 11–38. The test is based on the values of deviation, S, calculated in the two formulations:

S_P is the deviation from the polynomial regression, calculated in Equation 11–13, and

S_L denotes the deviation from the linear regression, calculated in Equation 11–32.

$$\frac{(n-2)\cdot s_L^2 - (n-3)\cdot s_P^2}{s_P^2} > F_{1,f} \qquad \text{(Eq. 11-38)}$$

Where:

df = 1, n − 3

f = n − 3

Put the values for S_P and S_L into Equation 11–38 and compare the result to $F_{1,f}$. Use the values of $F_{1,f}$ at the 95 percent confidence level in Table 2.

If the relationship in Equation 11–38 is true, the polynomial regression gives a better fit at the 95 percent confidence level. Evaluate the criteria described in section 13.2 for the polynomial regression. If the criteria are within the acceptable limits, you report all PM CEMS response values using the polynomial curve.

If the relationship in Equation 11–38 is false, the linear regression gives a better fit at the 95 percent confidence level. Evaluate the criteria described in section 13.2 for the linear regression. If the criteria are within the acceptable limits, you must report all PM CEMS response values using the linear regression.

(4) You may petition the Administrator for alternative solutions or sampling recommendations if the regression analysis presented in paragraphs (1) through (3) does not achieve acceptable correlation, confidence or tolerance intervals.

13.0 What Are the Performance Criteria for My PM CEMS?

You evaluate your PM CEMS based on the 7-day drift check, the accuracy of the correlation, and the sampling periods and cycle/response time.

13.1 What Is the 7-day Drift Check performance specification? Your daily PM CEMS internal drift checks must demonstrate that you PM CEMS does not drift or deviate from the value of the reference light, optical filter, Beta attenuation signal, or other technology-suitable vendor-provided reference standard by more than 2 percent of the upscale value. If your CEMS includes diluent and/or auxiliary monitors (for temperature, pressure, and/or moisture) that are employed as a necessary part of this performance specification, you must determine the calibration drift separately for each ancillary monitor in terms of its respective output (see the appropriate Performance Specification for the diluent CEMS specification). None of the calibration drifts may exceed their separate specification.

13.2 What are the correlation performance specifications? Your PM CEMS correlation must meet each of the minimum specifications in paragraphs (1), (2), and (3). Before confidence and tolerance interval percentage calculations are made, you must convert the emission limit to the appropriate units of your PM CEMS measurement conditions using the average of oxygen and designated gas property (*e.g.,* temperature,

pressure, and moisture) values experienced during the correlation test.

(1) The correlation coefficient, r, must be greater than or equal to 0.85.

(2) The confidence interval (95 percent) at the median PM CEMS reading from the correlation test must be within 10 percent of the PM emission limit value specified in the applicable regulation.

(3) The tolerance interval at the median PM CEMS reading from the correlation test must have 95 percent confidence that 75 percent of all possible values are within 25 percent of the PM emission limit value specified in the applicable regulation.

13.3 What are the sampling periods and cycle/response time? You must document and maintain the response time and any changes in the response time following installation.

(1) The response time for your PM CEMS must not exceed 2 minutes to achieve 95 percent of the final stable value.

(2) If you have a batch sampling PM CEMS, you must evaluate the limits presented in paragraphs (i) and (ii).

(i) Your PM CEMS's response time, which is the equivalent to the cycle time, must be no longer than 15 minutes. In addition, the delay between the end of the sampling time and reporting of the sample analysis must be no greater than 3 minutes. You must document any changes in the response time following installation.

(ii) Your PM CEMS's sampling time must be no less than 30 percent of the cycle time. If you have a batch sampling PM CEMS, sampling must be continuous except during pauses when the collected pollutant on the capture media is being analyzed and the next capture medium starts collecting sample.

13.4 What PM compliance monitoring must I do? You must report your CEMS measurements in the units of the standard expressed in the regulations (*e.g.,* mg/dscm @ 7 percent oxygen, lb/mmBtu, etc.). You may need to install auxiliary data monitoring equipment to convert the units reported by your PM CEMS into units of the PM emission standard.

14.0 Pollution Prevention. [Reserved]

15.0 Waste Management. [Reserved]

16.0 Which References Are Relevant To This Performance Specification?

16.1 Technical Guidance Document: Compliance Assurance Monitoring. U.S. Environmental Protection Agency Office of Air Quality Planning and Standards Emission Measurement Center. August 1998.

16.2 40 CFR part 60, Appendix B, ''Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_X, Continuous Emission Monitoring Systems in Stationary Sources.''

16.3 40 CFR part 60, Appendix B, ''Performance Specification 1—Specification and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources.

16.4 40 CFR part 60, Appendix A, ''Method 1—Sample and Velocity Traverses for Stationary Sources.''

16.5 ''Current Knowledge of Particulate Matter (PM) Continuous Emission Monitoring,'' U.S. Environmental Protection Agency, EPA–454/R–00–039, September 2000.

16.6 40 CFR part 266, Appendix IX, Section 2, ''Performance Specifications for Continuous Emission Monitoring Systems.''

16.7 ISO 10155, ''Stationary Source Emissions—Automated Monitoring of Mass Concentrations of Particles: Performance Characteristics, Test Procedures, and Specifications,'' dated 1995, American National Standards Institute, New York City.

16.8 G. Box, W. Hunter, J. Hunter, Statistics for Experimenters (Wiley, New York, 1978).

16.9 M. Spiegel, Mathematical Handbook of Formulas and Tables (McGraw-Hill, New York, 1968).

17.0 What Reference tables and validation data are relevant to PS–11? The information in Tables 1 and 2. Use Table 3 to record your 7-day drift test data.

TABLE 1.—FACTORS FOR CALCULATION OF CONFIDENCE AND TOLERANCE INTERVALS

f or n′	t_f	v_f	$u_{n'}$ (75)
2	4.303	4.415	1.433
3	3.182	2.920	1.340
4	2.776	2.372	1.295
5	2.571	2.089	1.266
6	2.447	1.915	1.247
7	2.365	1.797	1.233
8	2.306	1.711	1.223
9	2.262	1.645	1.214
10	2.228	1.593	1.208
11	2.201	1.551	1.203
12	2.179	1.515	1.199
13	2.160	1.485	1.195
14	2.145	1.460	1.192
15	2.131	1.437	1.189
16	2.120	1.418	1.187
17	2.110	1.400	1.185
18	2.101	1.385	1.183
19	2.093	1.370	1.181
20	2.086	1.358	1.179
21	2.080	1.346	1.178
22	2.074	1.335	1.177
23	2.069	1.326	1.175
24	2.064	1.317	1.174
25	2.060	1.308	1.173
26	2.056	1.301	1.172
27	2.052	1.294	1.172
28	2.048	1.287	1.171
29	2.045	1.281	1.171
30	2.042	1.274	1.170
31	2.040	1.269	1.169
32	2.037	1.264	1.169
33	2.035	1.258	1.168
34	2.032	1.253	1.168
35	2.030	1.248	1.167
36	2.028	1.244	1.167
37	2.026	1.240	1.166
38	2.025	1.236	1.166
39	2.023	1.232	1.165

TABLE 1.—FACTORS FOR CALCULATION OF CONFIDENCE AND TOLERANCE INTERVALS—Continued

f or n′	t_f	v_f	$u_{n'}$ (75)
40	2.021	1.228	1.165
41	2.020	1.225	1.165
42	2.018	1.222	1.164
43	2.017	1.219	1.164
44	2.015	1.216	1.163
45	2.014	1.213	1.163
46	2.013	1.210	1.163
47	2.012	1.207	1.163
48	2.011	1.205	1.162
49	2.010	1.202	1.162
50	2.009	1.199	1.162
51	2.008	1.197	1.162
52	2.007	1.194	1.162
53	2.006	1.191	1.161
54	2.005	1.189	1.161
55	2.005	1.186	1.161
56	2.004	1.183	1.161
57	2.003	1.181	1.161
58	2.002	1.178	1.160
59	2.001	1.176	1.160
60	2.000	1.173	1.160
61	2.000	1.170	1.160
62	1.999	1.168	1.160
63	1.999	1.165	1.159

TABLE 2.—VALUES FOR F_f

f	F_{1f}	f	F_{1f}
1	161.4	16	4.49
2	18.51	17	4.45
3	10.13	18	4.41
4	7.71	19	4.38
5	6.61	20	4.35
6	5.99	22	4.30
7	5.59	24	4.26
8	5.32	26	4.23
9	5.12	28	4.20
10	4.96	30	4.17
11	4.84	40	4.08
12	4.75	50	4.03
13	4.67	60	4.00
14	4.60	80	3.96
15	4.54	100	3.94

TABLE 3.—7-DAY DRIFT TEST DATA

Zero drift day #	Date and time	Zero check value (R_L)	PM CEMS response (R_{CEMS})	Difference ($R_{CEMS} - R_L$)	Zero drift ($R_{CEMS} - R_L$)/R_V
1					
2					
3					
4					
5					
6					
7					

Upscale drift day #	Date and time	Upscale check value (R_V)	PM CEMS response (R_{CEMS})	Difference ($R_{CEMS} - R_V$)	Upscale drift ($R_{CEMS} - R_V$)/ R_V
1					
2					
3					
4					
5					
6					
7					

18.0 Are There Example Calculations I Can Use for Following PS–11?

The following table is the data set for a hypothetical monitor and its initial PM CEMS correlation. These PM CEMS measurement conditions are at actual stack conditions. The source emission limit is 34 mg/dscm at 7 percent O_2. X is the CEMS arbitrary unit measurements and Y is the corresponding Method 5 concentration at actual stack conditions. The following series of example calculations provide an illustration of how data are used to determine the correlation coefficient, confidence interval, and tolerance interval for PS–11 treatment. You may use this example to check any spreadsheets that you build.

Run number	PM CEMS response X	Reference method (mg/acm) Y
1	2	3
2	6	5
3	10	4
4	18	8
5	24	12
6	30	14
7	34	16
8	36	15
9	40	17
10	48	18
11	52	17
12	60	19
13	70	18
14	80	21
15	90	23

18.1 Calculate the polynomial correlation. Count the number of simultaneous CEMS and Reference Method samples:

$n = 15$

The following calculations are necessary for the matrix solution to the polynomial least squares regression analysis.

$$S_1 = \sum_{i=1}^{n}\left(x_i\right) = (2+6+10+\ldots+70+80+90) = 600$$

$$S_2 = \sum_{i=1}^{n}\left(x_i^2\right) = (2^2+6^2+10^2+\ldots+70^2+80^2+90^2) = 34{,}000$$

$$S_3 = \sum_{i=1}^{n}\left(x_i^3\right) = (2^3+6^3+10^3+\ldots+70^3+80^3+90^3) = 2{,}249{,}040$$

$$S_4 = \sum_{i=1}^{n}\left(x_i^4\right) = (2^4+6^4+10^4+\ldots+70^4+80^4+90^4) = 1.63\cdot 10^8$$

$$S_5 = \sum_{i=1}^{n}\left(y_i\right) = (3+5+4+\ldots+18+21+23) = 210$$

$$S_6 = \sum_{i=1}^{n}\left(x_i\cdot y_i\right) = (2\cdot 3)+\ldots+(80\cdot 21)+(90\cdot 23) = 10{,}590$$

$$S_7 = \sum_{i=1}^{n}\left(x_1^2\cdot y_i\right) = \left(2^2\cdot 3\right)+\left(6_2\cdot 5\right)+\ldots+\left(80^2\cdot 21\right)+\left(90^2\cdot 23\right) = 652{,}572$$

$$A = \begin{bmatrix} n & S_1 & S_2 \\ S_1 & S_2 & S_3 \\ S_2 & S_3 & S_4 \end{bmatrix} = \begin{bmatrix} 15 & 600 & 34{,}000 \\ 600 & 34{,}000 & 2{,}249{,}040 \\ 34{,}000 & 2{,}249{,}040 & 1.630\cdot 10^8 \end{bmatrix}.$$

The determinant of the above matrix is determined by the cross product:

$$\det A = +n\cdot S_2\cdot S_4 - S_2\cdot S_2\cdot S_2 + S_1\cdot S_3\cdot S_2 - S_3\cdot S_3\cdot n + S_2\cdot S_1\cdot S_3 - S_4\cdot S_1\cdot S_1$$

$$\det A = \begin{array}{c} +15\cdot 34{,}000\cdot\left(1.630\cdot 10^8\right) - 34{,}000\cdot 34{,}000\cdot 34{,}000 \\ +600\cdot 2{,}249{,}040\cdot 34{,}000 - 2{,}249{,}040\cdot 2{,}249{,}040\cdot 15 = 1.033\cdot 10^{12} \\ +34{,}000\cdot 600\cdot 2{,}249{,}040 - \left(1.630\cdot 10^8\right)\cdot 600\cdot 600 \end{array}$$

The coefficients b_0, b_1, and b_2 are determined from the solution to the matrix equation Ab=B when:

$$A = \begin{bmatrix} n & S_1 & S_2 \\ S_1 & S_2 & S_3 \\ S_2 & S_3 & S_4 \end{bmatrix}, \qquad b = \begin{bmatrix} b_0 \\ b_1 \\ b_2 \end{bmatrix}, \qquad B = \begin{bmatrix} S_5 \\ S_6 \\ S_7 \end{bmatrix}.$$

$$b_0 = \left(S_5 \cdot S_2 \cdot S_4 + S_1 \cdot S_3 \cdot S_7 + S_2 \cdot S_6 \cdot S_3 - S_7 \cdot S_2 \cdot S_2 - S_3 \cdot S_3 \cdot S_5 - S_4 \cdot S_6 \cdot S_1\right) / \det A$$

$$b_0 = \frac{\begin{array}{c} +210 \cdot 34{,}000 \cdot \left(1.630 \cdot 10^8\right) + 600 \cdot 2{,}249{,}040 \cdot 652{,}572 \\ +34{,}000 \cdot 10{,}590 \cdot 2{,}249{,}040 - \cdot 652{,}572 \cdot 34,\ 000 \cdot 34{,}000 \\ -2{,}249{,}040 \cdot 2{,}249{,}040 \cdot 210 - \left(1.630 \cdot 10^8\right) \cdot 10{,}590 \cdot 600 \end{array}}{1.033 \cdot 10^{12}}$$

$$b_0 = \frac{\begin{array}{c} +1.164 \cdot 10^{15} + 8.806 \cdot 10^{14} + 8.098 \cdot 10^{14} \\ -7.544 \cdot 10^{14} - 1.062 \cdot 10^{15} - 1.036 \cdot 10^{15} \end{array}}{1.033 \cdot 10^{12}} = 1.846$$

$$b_1 = \left(n \cdot S_6 \cdot S_4 + \cdot S_5 \cdot S_3 \cdot S_2 + S_2 \cdot S_1 \cdot S_7 - S_2 \cdot S_6 \cdot S_2 - S_7 \cdot S_3 \cdot n - S_4 \cdot S_1 \cdot S_5\right) / \det A$$

$$b_1 = \frac{\begin{array}{c} +15 \cdot 10{,}590 \cdot 1.63 \cdot 10^8 + 210 \cdot 2{,}249{,}040 \cdot 34{,}000 + 34{,}000 \cdot 600 \cdot 652{,}572 \\ -34{,}000 \cdot 10{,}590 \cdot 34{,}000 - 652{,}572 \cdot 2{,}249{,}040 \cdot 15 - 1.63 \cdot 10^8 \cdot 600 \cdot 210 \end{array}}{1.033 \cdot 10^{12}}$$

$$b_1 = \frac{2.589 \cdot 10^{13} + 1.606 \cdot 10^{13} + 1.331 \cdot 10^{13} - 1.224 \cdot 10^{13} - 2.201 \cdot 10^{13} - 2.504 \cdot 10^{13}}{1.033 \cdot 10^{13}} = 0.4530$$

$$b_2 = \frac{\left(n \cdot S_2 \cdot S_7 + \cdot S_1 \cdot S_6 \cdot S_2 + S_5 \cdot S_1 \cdot S_3 - S_2 \cdot S_2 \cdot S_5 - S_3 \cdot S_6 \cdot n - S_7 \cdot S_1 \cdot S_1\right)}{\det A}$$

$$b_2 = \frac{\begin{array}{c} +15 \cdot 34{,}000 \cdot 652{,}572 + 600 \cdot 10{,}590 \cdot 34{,}000 + 210 \cdot 600 \cdot 2{,}249{,}040 \\ -34{,}000 \cdot 34{,}000 - 2{,}249{,}040 \cdot 10{,}590 \cdot 15 - 652{,}572 \cdot 600 \cdot 600 \end{array}}{1.033 \cdot 10^{12}}$$

$$b_2 = \frac{3.328 \cdot 10^{11} + 2.160 \cdot 10^{11} + 2.834 \cdot 10^{11} - 2.428 \cdot 10^{11} - 3.573 \cdot 10^{11} - 2.349 \cdot 10^{11}}{1.033 \cdot 10^{12}} = -0.00263$$

Note: More significant figures are necessary for correct calculation of b_0, b_1, and b_2.

The general equation for a polynomial equation is written:

$$\hat{y} = b_0 + b_1 x + b_2 x^2$$

Substitute the slopes and intercept calculated above:

$$\hat{y} = 1.846 + 0.4530x - 0.00263x^2$$

The scatter or deviation of y values with respect to y correlation equation S_P is determined:

$$s_p = \sqrt{\frac{1}{n-3} \sum_{i=1}^{n} \left(\hat{y}_i - y_i\right)^2}$$

Y-predict, $\hat{y}$, is calculated on a run by run basis using the observed PM concentrations, x, and the polynomial correlation equation.

$\hat{y}$ for Run l where x = 2

$$\hat{y} = 1.846 + 0.4529 \cdot 2 - 0.00263 \cdot 2^2 = 2.742$$

$$s_p = \sqrt{\frac{1}{15-3} \sum_{i=1}^{n} \left((2.742-3)^2 + \ldots + (21.30-23)^2\right)} = 1.434$$

The C coefficients below are necessary for confidence interval calculations:

$$D = n\left(S_2 \cdot S_4 - S_3^2\right) + S_1\left(S_3 \cdot S_2 - S_1 \cdot S_4\right) + S_2\left(S_1 \cdot S_3 - S_2^2\right)$$

$$D = \begin{array}{l} +15\left(34{,}000 \cdot 1.63 \cdot 10^8 - 2{,}249{,}040^2\right) \\ +600\left(2{,}249{,}040 \cdot 34{,}000 - 600 \cdot 1.63 \cdot 10^8\right) \\ +34{,}000\left(600 \cdot 2{,}249{,}040 - 34{,}000^2\right) \end{array} = 1.033 \cdot 10^{12}$$

$$C_0 = \frac{\left(S_2 \cdot S_4 - S_3^2\right)}{D} = \frac{\left(34{,}000 \cdot 1.63 \cdot 10^8 - 2{,}249{,}040^2\right)}{1.033 \cdot 10^{12}} = 0.4681$$

$$C_1 = \frac{\left(S_3 \cdot S_2 - S_1 \cdot S_4\right)}{D} = \frac{\left(2{,}249{,}040 \cdot 34{,}000 - 600 \cdot 1.63 \cdot 10^8\right)}{1.033 \cdot 10^{12}} = -0.02064$$

$$C_2 = \frac{\left(S_1 \cdot S_3 - S_2^2\right)}{D} = \frac{\left(600 \cdot 2{,}249{,}040 - 34{,}000^2\right)}{1.033 \cdot 10^{12}} = 1.872 \cdot 10^{-4}$$

$$C_3 = \frac{\left(n \cdot S_4 - S_2^2\right)}{D} = \frac{\left(15 \cdot 1.63 \cdot 10^8 - 34{,}000^2\right)}{1.033 \cdot 10^8} = 0.001247$$

$$C_4 = \frac{\left(S_1 \cdot S_2 - n \cdot S_3\right)}{D} = \frac{(600 \cdot 34{,}000 - 15 \cdot 2{,}249{,}040)}{1.033 \cdot 10^{12}} = -1.291 \cdot 10^{-5}$$

$$C_5 = \frac{\left(n \cdot S_2 - S_1^2\right)}{D} = \frac{\left(15 \cdot 34{,}000 - 600^2\right)}{1.033 \cdot 10^{12}} = 1.452 \cdot 10^{-7}$$

Delta, Δ, is calculated on a run by run basis using the observed PM concentrations, x.

Δ for Run 1 where x = 2

$$\Delta = C_0 + 2C_1x + \left(2C_2 + C_3\right)x^2 + 2C_4x^3 + C_5x^4$$

$$\Delta = \begin{array}{l} 0.4681 + 2\ (-0.02064)\ 2 + \left(2 \cdot 1.872 \cdot 10^{-4} + 0.001247\right)\ 2^2 \\ +2\ \left(-1.291 \cdot 10^{-5}\right) \cdot 2^3 + 1.452 \cdot 10^{-7} 2^4 \end{array} = 0.3918$$

18.2 Calculate the polynomial confidence interval. Each ŷ has an associated tolerance and confidence intervals. Acceptance criteria are based on the percent of the interval over the emission limit (see section 13.2).

Recall: Source Emission limit is 34 mg/dscm @7 percent O_2. The example PM CEMS conditions of measurement are equal to the stack conditions.

Convert 34 mg/dscm @7 percent O_2 into units of actual PM concentration:

where:

$C_{s@7\%}$ = 34 mg/dscm @ 7 percent O_2

ts = 292 °F, average temperature during initial PM CEMS Correlation

B_{ws} = 20, average percent moisture during initial PM CEMS Correlation

P = 30 in Hg , average absolute stack pressure during initial PM CEMS Correlation

$$C_{acm} = \left(C_s\right) \cdot \frac{528^0 R}{\left(460 + t_{sp}\right)} \cdot \frac{P}{29.92 inHg} \cdot \left(1 - \frac{B_{ws}}{100}\right)$$

$$C_{acm} = (34) \frac{528^0 R}{(460 + 292)} \cdot \frac{30}{29.92 inHg} \cdot \left(1 - \frac{20}{100}\right) = 19.149 mg/acm$$

Using the polynomial correlation equation, calculate the predicted CEMS response at the median x value (=36).

$$\hat{y} = 1.846 + 0.4530x - 0.00263x^2$$

$$\hat{y} = 1.846 + 0.4530\ (36) - 0.00263\ (36)^2$$

$$\hat{y} = 14.746$$

Calculate Δ at the median x value:

$$\Delta = C_0 + 2C_1x + \left(2C_2 + C_3\right)x^2 + 2C_4x^3 + C_5x^4$$

$$\Delta = \begin{array}{c} 0.4681 + 2\ (-0.02064) \cdot 36 \\ + \left(2 \cdot 1.872 \cdot 10^{-4} + 0.001247\right)\ 36^2 \\ +2\ \left(-1.291 \cdot 10^{-5}\right) \cdot 36^3 + 1.452 \cdot 10^{-7} 36^4 \end{array} = 0.0948$$

Table 1 lists statistical values as a function of sample size and degrees of freedom.

$$f = n - 3,$$
$$t_f = 2.179$$

Substitute values into the following equation for confidence interval calculation:

$$\left(y_{c-lower}, y_{c-upper}\right) = \hat{y} \pm t_f \cdot s_p \sqrt{\Delta}$$

$$\left(y_{c-lower}, y_{c-upper}\right) = 14.746 \pm 2.179 \cdot 1.434 \sqrt{0.0948}$$

$$\left(y_{c-lower}, y_{c-upper}\right) = 14.746 \pm 0.9621 = (13.784,\ 15.708)$$

$$CI\% = \frac{CI}{EL} \cdot 100\%$$

$$CI\% = \frac{0.9621}{19.149} \cdot 100\% = 5.02\%$$

18.3 The polynomial tolerance interval is calculated through a series of simple calculations and references to Table 1.

$$k_T = u_{n'} \cdot v_f$$

From Table 1 $u_{n'} = 1.203$

$$v_f = 1.5153$$

$$n' = \frac{1}{\Delta}$$

$$n' = \frac{1}{0.0948} = 10.549$$

$$k_T = 1.203 \cdot 1.5153 = 1.8229$$

$$\left(y_{t-lower}, y_{t-upper}\right) = \hat{y} \pm k_T \cdot s_p$$

$$\left(y_{t-lower}, y_{t-upper}\right) = 14.746 \pm 1.8229 \cdot 1.434$$

$$\left(y_{t-lower}, y_{t-upper}\right) = 14.746 \pm 2.6140 = (12.1320,\ 17.3600)$$

$$TI\% = \frac{TI}{EL} \cdot 100\%$$

$$TI\% = \frac{2.6140}{19.149} \cdot 100\% = 13.65\%$$

18.4 Calculate the polynomial correlation coefficient. Correlation, r, is the statistical measure of association between x and y. A value of r near 1 indicates a strong, polynomial relationship, while a value near 0 indicates a poor relationship.

Quantify scatter of y values with respect to the average y:

$$\bar{y} = \frac{1}{n}\sum_{i=1}^{n} y_i = \frac{1}{15}(3+5+4+\ \ldots\ +18+21+23) = 14$$

$$S_y = \sqrt{\frac{\sum_{i=1}^{n}(y_i - \bar{y})^2}{n-1}}$$

$$S_y = \sqrt{\frac{\sum_{i=1}^{n}\left((3-14)^2 + \ldots + (23-14)^2\right)}{15-1}} = 6.279$$

Recall the scatter of y values with respect to y correlation equation:

$$S_p = 1.434$$

$$r = \sqrt{1 - \frac{S_p^2}{S_y^2}} = \sqrt{1 - \frac{1.434^2}{6.279^2}} = 0.9726$$

18.5 What is the acceptability of the polynomial correlation? To meet the criteria, the polynomial minimum or maximum must exist outside the expanded data range. Since $b_2 < 0$, the polynomial curve has a maximum. The maximum occurs where y is:

$$y = -\frac{b_1}{2b_2}$$

$$y = -\frac{0.4530}{2\cdot(-0.002632)} = 86.06$$

The extrapolation of the correlation curve is limited to 125 percent above the highest measured PM CEMS response.

Maximum CEMS response = 90

$$\text{Extrapolated PM CEMS range} = 90\cdot 125\% = 112.5$$

The maximum must occur above the highest extrapolation of correlated range.

$$86.06\ (\text{maximum}) < 112.5$$

In this example data set the polynomial correlation equation predicts that: As the PM CEMS responses increase above 86.06 the PM concentration will decrease. If the source emission limit was outside the extrapolated range a violation would be impossible. This is not acceptable, therefore proceed to the linear analysis.

18.6 Calculate the linear correlation.

Recall the number of simultaneous PM CEMS and RM samples from the table above:

n = 15

Calculate the average RM concentration, x:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i = \frac{1}{15}(2+6+10+\ldots+70+80+90) = 40$$

Calculate the deviations:

$$S_{xx} = \sum_{i=1}^{n}(x_i - \bar{x})^2 = (2-40)^2 + (6-40)^2 + \ldots + (80-40)^2 + (90-40)^2 = 10{,}000$$

Recall the average PM CEMS Response $\bar{y} = 14$

$$S_{yy} = \sum_{i=1}^{n}(y_1 - \bar{y})^2 = (3-14)^2 + (5-14)^2 + \ \ldots\ + (21-14)^2 + (23-14)^2 = 552$$

$$S_{xy} = \sum_{i=1}^{n}(x_1 - \bar{x})(y_i - \bar{y}) = (2-40)\cdot(3-14) + \ \ldots\ + (90-40)\cdot(23-14) = 2{,}190$$

Calculate the slope (b_1):

$$b_1 = \frac{S_{xy}}{S_{xx}} = \frac{2{,}190}{10{,}000} = 0.2190$$

and the y-intercept (b_0):

$$b_0 = \bar{y} - b_1\bar{x} = 14 - 0.2190\cdot(40) = 5.240$$

These values substituted into the general equation of a line yield the linear correlation for the above data set:

$$\hat{y} = 5.240 + (0.2190)\cdot x$$

The linear deviation is calculated below: Y-predict, $\hat{y}$, is calculated on a run by run basis using the observed PM concentrations, x, and the linear correlation equation: for

$\hat{y}$ for Run 1 where x = 2

$$\hat{y} = 5.240 + (0.2190) \cdot 2 = 5.678$$

$$s_L = \sqrt{\frac{1}{n-2}\sum_{i=1}^{n}(\hat{y}_i - y_i)^2}$$

$$s_L = \sqrt{\frac{1}{15-2}\sum_{i=1}^{n}\left((5.678-3)^2 + \ldots + (24.95-23)^2\right)} = 2.360$$

18.7 Calculate the linear confidence interval. Recall from the polynomial interval investigations the emission limit at actual stack conditions:

$$C_{acm} = 19.149 \text{mg / acm}$$

Using the linear correlation equation, calculate the predicted PM CEMS response at the median x value ($\bar{x}$= 36)

$$\hat{y} = 5.240 + (0.2190)x = 13.124$$

Calculate the confidence interval using the reference values for t_f in Table 1.

$$t_{13,0.975} = 2.160$$

$$\left(y_{c-lower}, y_{c-upper}\right) = \hat{y} \pm t_{f,1-\alpha/2} \cdot S_L \sqrt{\frac{1}{n} + \frac{(x-\bar{x})^2}{S_{xx}}}, \text{with } f = n-2$$

$$\left(y_{c-lower}, y_{c-upper}\right) = 13.124 \pm 2.160 \cdot 2.360 \sqrt{\frac{1}{15} + \frac{\left(36-40^2\right)}{10{,}000}}$$

$$\left(y_{c-lower}, y_{c-upper}\right) = 13.124 \pm (2.160) \cdot (2.360) \cdot (0.2613)$$

$$\left(y_{c-lower}, y_{c-upper}\right) = 13.124 \pm 1.332$$

$$= (11.792,\ 14.456)$$

Confidence interval percent is calculated from:

$$CI\% = \frac{CI}{EL} \cdot 100\% = \frac{1.332}{19.149} \cdot 100\% = 6.96\%$$

18.8 Calculate the linear tolerance interval. Recall the median x and predicted PM CEMS result as above.

$$y = 13.124$$
$$x = 36$$

Calculate n′:

$$n' = \frac{n}{1 + \frac{n \cdot (x-\bar{x})^2}{S_{xx}}} = \frac{15}{1 + \frac{15 \cdot (36-40)^2}{10{,}000}} = 14.6$$

Reference the values of v_f and $u_{n'}$, from Table 1.

$$v_f = 1.4854$$
$$u_{n'} = 1.189$$

An intermediate calculation is necessary for the tolerance interval:

$$k_T = (1.189)(1.4854) = 1.766$$

$$\left(y_{t-lower}, y_{t-upper}\right) = \hat{y} \pm k_T \cdot S_L$$

$$\left(y_{t-lower}, y_{t-upper}\right) = 13.124 \pm 1.766 \cdot 2.360$$

$$\left(y_{t-lower}, y_{t-upper}\right) = 13.124 \pm 4.168 = (8.956,\ 17.292)$$

Tolerance interval percent

$$TI\% = \frac{TI}{EL} \cdot 100\% = \frac{4.168}{19.149} \cdot 100\% = 21.77\%$$

18.9 Calculate the linear correlation coefficient

Where:

Sy = 6.279 (Defined in the Polynomial Correlation)

$$r = \sqrt{1 - \frac{S_L^2}{S_y^2}} = \sqrt{1 - \frac{2.360^2}{6.279^2}} = 0.9267$$

The linear correlation meets the acceptance criteria. All PM CEMS responses should be reported using the linear correlation equation.

18.10 Determine the best correlation fit. For example purposes only, assume that the maximum calculated in the polynomial correlation had existed outside the extrapolated range of CEMS responses.

A statistical test determines if the fit using a polynomial regression offers a statistically significant improvement over the linear regression based on their values of deviation, S, calculated in the two formulations.

S_Q is the deviation from the polynomial regression.

S_L denotes the deviation from the linear regression.

$$\frac{(n-2) \cdot s_L^2 - (n-3) \cdot s_Q^2}{s_Q^2} > F_{1,f}$$

When:

$f = n - 3$

Reference values of $F_{1,f}$ at the 95 percent confidence level in Table 2.

$$F_{1,f} = 4750$$

$$\frac{(15-2) \cdot 2.360^2 - (15-3) \cdot 1.434^2}{1.434^2} > 4.750$$

$$23.210 > 4.750$$

The polynomial regression gives a better fit at the 95 percent confidence level.

Correlation type	Linear acceptance criteria	Polynomial acceptance criteria
Correlation Coefficient (r)	0.9321	0.9726
Confidence Interval (CI)	6.96%	5.02%
Tolerance Interval (TI)	21.77%	13.65%

3. Appendix F of Part 60 is amended by adding Procedure 2 to read as follows:

Appendix F to Part 60—Quality Assurance Procedures

* * * * *

Procedure 2—Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources

1.0 What Are the Purpose and Applicability of Procedure 2?

The purpose of Procedure 2 is to establish the minimum requirements for evaluating the effectiveness of quality control (QC) and quality assurance (QA) procedures and the quality of data produced by your particulate matter (PM) continuous emission monitoring system (CEMS). Procedure 2 applies to PM CEMS used for continuously determining compliance with emission standards or operating permit limits as specified in an applicable regulation or permit. Other QC procedures may apply to diluent (e.g.,O_2) monitors and other auxiliary monitoring equipment included with your CEMS to facilitate PM measurement or determination of PM concentration in units specified in an applicable regulation.

1.1 What measurement parameter does Procedure 2 address? Procedure 2 covers the instrumental measurement of PM as defined by your source's applicable RM (no CAS number assigned).

1.2 For what types of devices must I comply with Procedure 2? You must comply with Procedure 2 for the total equipment that:

(1) We require you to install and operate on a continuous basis under the applicable regulation, and

(2) You use to monitor the PM mass concentration associated with the operation of a process or emission control device.

1.3 What are the data quality objectives of Procedure 2? The overall data quality objective (DQO) of Procedure 2 is the generation of valid, representative data that can be transferred into useful information for determining PM CEMS concentrations averaged over a prescribed interval. Procedure 2 is also closely associated with Performance Specification 11 (PS–11).

(1) Procedure 2 specifies the minimum requirements for controlling and assessing the quality of PM CEMS data submitted to us or the delegated permitting authority.

(2) You must meet these minimum requirements if you are responsible for one or more PM CEMS used for compliance monitoring. We encourage you to develop and implement a more extensive QA program or to continue such programs where they already exist.

1.4 What is the intent of the QA/QC Procedures found in Procedure 2? Procedure 2 is intended to establish the minimum QA/QC requirements for PM CEMS, and is presented in general terms to allow you to develop a program that is most effective for your circumstances. You may adopt QA/QC procedures which go beyond these minimum requirements to ensure compliance with applicable regulations.

1.5 When must I comply with Procedure 2? You must comply with Procedure 2 immediately following successful completion of the initial correlation test of PS–11.

2.0 What Are the Basic Requirements of Procedure 2?

Procedure 2 requires you to perform periodic evaluations of PM CEMS performance and to develop and implement QA/QC programs to ensure that PM CEMS data quality is maintained.

2.1 What Are the Basic Functions of Procedure 2?

(1) Assessment of the quality of your PM CEMS data by estimating measurement accuracy, and

(2) Control and improvement of the quality of your PM CEMS data by implementing QC requirements and corrective actions.

(3) When the assessment function in paragraph (1) indicates that the data quality is inadequate, the corrective actions in paragraph (2) must be taken until the data quality is acceptable, and

(4) Assessment of the precision and bias of data gathered using manual RM procedures used to compare PM CEMS instrument response, assuring the quality of the RM data, and

(5) Provides requirements for daily instrument zero and upscale drift checks and sample volume checks as well as routine response correlation audits, absolute correlation audits, sample volume audits, and relative response audits.

3.0 What Special Definitions Apply to Procedure 2?

The definitions in Procedure 2 include those provided in Performance Specification 11 (PS–11) of Appendix B, with the following additions:

3.1 ''Absolute Correlation Audit (ACA)'' means an evaluation of your PM CEMS

response to a series of reference standards covering the full measurement range of the instrument (*e.g.,* 4 mA to 20 mA).

3.2 ''Correlation Range'' means the range of PM CEMS response used in the complete set of correlation test data.

3.3 ''Continuous Emissions Monitoring System'' means all of the equipment required for determination of particulate matter mass concentration in units of the emission standard. The sample interface, pollutant monitor, diluent monitor, other auxiliary data monitor(s), and data recorder are the major subsystems of your CEMS.

3.4 ''Drift Check'' means a determination of the difference in your PM CEMS output readings from the established reference value of a reference standard or procedure after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place. The procedures used to determine drift will be specific to the operating practices of your specific PM CEMS. A drift check includes both a zero drift check and an upscale drift check.

3.5 ''Flagged Data'' means data marked by your CEMS indicating that the response value(s) from one or more CEMS subsystems is suspect, invalid, or that your PM CEMS is not in source measurement operating mode.

3.6 ''PM CEMS Correlation'' means the site-specific relationship (*i.e.*, a regression equation) between the output from your PM CEMS (*e.g.*, mA) and the particulate concentration, as determined by the RM. The PM CEMS correlation is expressed in the units that your PM CEMS measures the PM concentration [(*e.g.*, milligrams/actual cubic meter (mg/acm)]. You must derive this relation from response data from the PM CEMS and simultaneously gathered manual RM data. You must gather these data over the full range of source operating conditions and PM concentrations recorded during the Correlation Test Planning Period. You must develop the correlation by performing the steps presented in sections 12.2 and 12.3 of PS–11.

3.7 ''Reference Method Sampling Location'' means the location in your source's exhaust duct from which you collect manual Reference Method data for developing your PM CEMS correlation and for performing relative response audits (RRAs) and relative correlation audits (RCAs).

3.8 ''Reference Standard'' means a reference material or procedure that produces a known and unchanging response when presented to the pollutant monitor portion of your CEMS. You must use these standards to evaluate the overall operation of your PM CEMS but not to develop a PM CEMS correlation.

3.9 ''Response Correlation Audit (RCA)'' means the series of tests you conduct to assure the continued validity of your PM CEMS correlation.

3.10 ''Relative Response Audit (RRA)'' means the brief series of tests you conduct between the full RCA to assure the continued validity of your PM CEMS correlation.

3.11 ''Sample Volume Audit (SVA)'' means an evaluation of your PM CEMS measurement of sample volume if your PM CEMS determines PM concentration based on a measure of particulate mass in an extracted sample volume and an independent determination of sample volume.

3.12 ''Sample Volume Check'' means a determination of the difference between your PM CEMS sample volume reading and the sample volume reference value.

3.13 ''Upscale Check Value'' means the expected response to a reference standard or procedure used to check the upscale response of your PM CEMS.

3.14 ''Upscale Drift (UD) Check'' means a determination of the difference between your PM CEMS output reading and the upscale check value.

3.15 ''Zero Check Value'' means the expected response to a reference standard or procedure used to check the response of your PM CEMS to particulate free or low particulate concentration situations.

3.16 ''Zero Drift (ZD) Check'' means a determination of the difference between your CEMS output reading and the zero check value.

4.0 Interferences. [Reserved]

5.0 What Do I Need To Know To Ensure the Safety of Persons Using Procedure 2?

People using Procedure 2 may be exposed to hazardous materials, operations, and equipment. Procedure 2 does not purport to address all of the safety issues associated with its use. It is your responsibility to establish appropriate safety and health practices and determine the applicable regulatory limitations before performing this procedure. You must consult your CEMS users manual for specific precautions to be taken with regard to your PM CEMS procedures.

6.0 What Equipment and Supplies Do I Need? [Reserved]

7.0 What Reagents and Standards Do I Need?

You will need reference standards or procedures to perform the zero drift check, the upscale drift check, and the sample volume check.

7.1 What is the reference standard value for the zero drift check? You must use a zero check value that is no greater than 20 percent of the PM CEMS's response range. You must obtain documentation on the zero check value from your PM CEMS manufacturer.

7.2 What is the reference standard value for the upscale drift check? You must use an upscale check value that produces a response between 50 and 100 percent of the PM CEMS's response range. For a PM CEMS that produces output over a range of 4 mA to 20 mA, the upscale check value must produce a response in the range of 12 mA to 20 mA. You must obtain documentation on the upscale check value from your PM CEMS manufacturer.

7.3 What is the reference standard value for the sample volume check? You must use a reference standard value or procedure that produces a sample volume value equivalent to the normal sampling rate. You must obtain documentation on the sample volume value from your PM CEMS manufacturer.

8.0 What Sample Collection, Preservation, Storage, and Transport Are Relevant to This Procedure? [Reserved]

9.0 What Quality Control Measures Are Required by This Procedure for My PM CEMS?

You must develop and implement a QC program for your PM CEMS. Your QC program must, at a minimum, include written procedures which describe in detail complete, step-by-step procedures and operations for the activities in paragraphs (1) through (7).

(1) Procedures for performing drift checks including both zero drift and upscale drift and the sample volume check (see sections 10.2(1), (2), and (5)).

(2) Methods for adjustment of PM CEMS based upon response of checks.

(3) Preventative maintenance of PM CEMS (including spare parts inventory and sampling probe integrity).

(4) Data recording, calculations, and reporting.

(5) Response Correlation Audit and Relative Response Audit procedures including sampling and analysis methods, sampling strategy, and structuring test conditions over the prescribed range of PM concentrations.

(6) Procedures for performing Absolute Correlation Audits and Sample Volume Audits and methods for adjusting your PM CEMS response based upon ACA and SVA results.

(7) Program of corrective action for malfunctioning PM CEMS, including flagged data periods.

9.1 What QA/QC documentation must I have? You are required to keep the QA/QC written procedures on record and available for inspection by us, the State and or local enforcement agency for the life of your CEMS or until you are no longer subject to the requirements of this procedure.

9.2 How do I know if I have acceptable QC procedures for my PM CEMS? Your QC procedures are inadequate or your PM CEMS is incapable of providing quality data if you fail two consecutive QC audits (i.e., out-of-control conditions resulting from the annual audits, quarterly audits or daily checks). Therefore, if you fail the same two consecutive audits, you must revise your QC procedures or modify or replace your PM CEMS to correct the deficiencies causing the excessive inaccuracies. (See section 10.4 for limits for excessive audit inaccuracy.)

10.0 What Calibration/Correlation and Standardization Procedures Must I Perform for My PM CEMS?

You must generate a site-specific correlation for each of your PM CEMS installation(s) relating response from your PM CEMS to results from simultaneous PM RM testing. PS–11 defines procedures for developing the correlation and defines a series of statistical parameters for assessing acceptability of the correlation. However, a critical component of your PM CEMS correlation process is assuring the accuracy and precision of RM data. The activities listed in sections 10.1 through 10.8 assure the quality of the correlation.

10.1 When must I use paired trains for Reference Method testing? You must use paired train RM testing to generate data used to develop your PM CEMS correlation and for RCA testing. Paired trains are not required for the RRA testing.

(1) How should the paired trains be arranged? Such tests should consist of sampling the flue gas using collocated probes and nozzle tips following the general equipment procedures described in EPA Method 301.

(2) Are other paired probe arrangements acceptable? Yes, you must follow the procedures described in paragraphs (i) and (ii).

(i) If collocation of the probes is not possible or practical, use of two single trains inserted through different sample ports at the same stack elevation is the preferred best alternative.

(ii) You can collect simultaneous RM data from different sampling locations if neither of the approaches described in (1) or 2(i) of this section is possible or practical. For this option, you must select sampling locations that minimize the potential for differences in measured PM concentration.

(3) How precise must my RM data be? The relative standard deviation (RSD) of paired data is the parameter used to quantify data precision. Use Equation 2–5 to calculate RSD for two simultaneously gathered data points (population relative standard deviation). Note that an alternate definition of standard deviation may be familiar to you but may not be used. The alternate definition is the default definition in many computer software packages. (i) The precision criterion for RM PM data is that RSD (as defined in Equation 2–5) for any data pair must be such that:

If the average PM concentration is * * *	Then the RSD must be * * *
> 10 mg/dscm	< 10 percent
< 1 mg/dscm	< 25 percent
Between 1 and 10 mg/dscm	< the percentage determined from the following equation: −(15/9) * mg/dscm + 26.667 (i.e., the linear interpolation between 25% at 1 mg/dscm and 10% at 10 mg/dscm.

(ii) You must eliminate pairs of manual method data exceeding the RSD criterion from the data set used to develop a PM CEMS correlation or to assess RCA.

(4) What other criteria must my RM data meet? The potential exists for bias in RM data due to problems with the sampling equipment, operator error, or sample recovery. Systematic errors of this nature can often be identified by cross plotting results from simultaneous dual train tests (i.e., Train A results on x-axis and Train B results on y-axis). Ideally, these data will generate a straight line correlation, passing through the origin, and with a slope of 1.0. To check your data for bias, you must complete the process described in section 10.1(4)(i)

(i) After removing data pairs that fail the precision requirements of section 10.1(3), you must perform a regression analysis of the data pairs and determine the slope of the straight line fit. The slope calculated in the regression analysis must fall between 0.93 and 1.07. Calculated slopes exceeding these criteria strongly suggest that one (or both) of the manual train data sets is/are biased. You may not use biased data in developing your PM CEMS correlation or for evaluating RCA. You must identify and correct the source of the bias before repeating the manual testing program.

10.2 What routine system checks must I perform on my PM CEMS? You must perform routine checks to assure proper operation of system electronics and optics, light and radiation sources and detectors, electric or electro-mechanical systems, and general stability of the system calibration. Necessary components of the routine system checks will depend upon design details of your PM CEMS. As a minimum, you must verify the system operating parameters listed in paragraphs (1) through (5) on a daily basis. Some PM CEMS may perform one or more of these functions automatically or as an integral portion of unit operations; other PM CEMS may perform one or more of these functions manually.

(1) You must check the zero drift to assure stability of your PM CEMS response to the zero check value. You must determine system output on the most sensitive measurement range when the PM CEMS is challenged with a zero reference standard or procedure. You must, at a minimum, adjust your PM CEMS whenever the daily zero drift exceeds 4 percent.

(2) You must check the upscale drift to assure stability of your PM CEMS response to the upscale check value. You must determine system output when the PM CEMS is challenged with a reference standard or procedure corresponding to the upscale check value. You must, at a minimum, adjust your PM CEMS whenever the daily upscale drift check exceeds 4 percent.

(3) For light scattering and extinction type PM CEMS, you must check the system optics to assure that system response has not been altered by the condition of optical components such as fogging of lens and performance of light monitoring devices. You must carefully adhere to the manufacturer's procedures and specifications.

(4) You must record data from your automatic drift adjusting PM CEMS before any adjustment is made. You must program a PM CEMS that automatically adjusts its response to the corrected calibration values (e.g., microprocessor control) to record the unadjusted concentration measured in the drift check before resetting the calibration, if performed, or to record the amount of adjustment.

(5) For extractive type PM CEMS that measures the sample volume and uses the measured sample volume as part of calculating the output value, you must check the sample volume to verify the sample volume measuring equipment. This sample volume check must be done at the normal sampling rate of your PM CEMS. You must adjust your PM CEMS sample volume measurement whenever the daily sample volume check error exceeds 10 percent.

10.3 What are the auditing requirements for my PM CEMS? You must subject your PM CEMS to an ACA and an SVA, as applicable, at least once each calender quarter. Successive quarterly audits must occur no closer than 2 months. You must conduct a RCA at the frequency specified in the applicable regulation or facility operating permit. You must conduct an RRA once every four calendar quarters. If you schedule an RCA for one of the four calendar quarters in the year, the RCA would take the place of the RRA.

(1) When do I need to run an ACA? You must run an ACA each quarter.

(2) How do I conduct an ACA? You must challenge your PM CEMS with an audit standard or an equivalent audit reference to reproduce the PM CEMS's measurement at three points within the following ranges:

Audit point	Audit range
1	0 to 20% of measurement range,
2	40 to 60% of measurement range, and
3	70 to 100% of measurement range.

(i) You must then challenge your PM CEMS three times at each audit point, and use the average of the three responses in determining accuracy at each audit point. Use a separate audit standard for audit points 1, 2, and 3. Challenge the PM CEMS at each audit point for a sufficient period of time to assure that your PM CEMS response has stabilized.

(ii) Operate your PM CEMS in the mode, manner and range specified by the manufacturer.

(iii) Use only audit standards specified and provided by the manufacturer. Store, maintain, and use audit standards as specified by the manufacturer.

(iv) Use the difference between the actual known value of the audit standard specified by the manufacturer and the response of your PM CEMS to assess the accuracy of your PM CEMS.

(3) When do I need to run a SVA? You must perform an audit of the measured sample volume (e.g., the sampling flow rate for a known time) once per quarter for applicable PM CEMS with an extractive sampling system. Also, you must perform and pass an SVA prior to initiation of any of the RM data collection runs for an RCA or RRA.

(i) How do I perform the SVA? You must perform the SVA by independently measuring the volume of sample gas extracted from the stack or duct over each batch cycle or time period with a calibrated device. You may make this measurement either at the inlet or outlet of your PM CEMS, so long as it measures the sample gas volume without including any dilution or recycle air. Compare the measured volume with the volume reported by your PM CEMS for the same cycle or time period to calculate sample volume accuracy.

(ii) How many measurements do I make for the SVA? You must make measurements during three sampling cycles for batch extractive monitors (e.g., Beta-gauge) or during three periods of at least 20 minutes for continuous extractive PM CEMS.

(iii) Do I need to take any precautions when doing the SVA? You may need to condense, collect and measure moisture from the sample gas prior to the calibrated measurement device (e.g., dry gas meter), and correct the results for moisture content. In any case, the volumes measured by the calibrated device and your PM CEMS must be on a consistent temperature, pressure, and moisture basis.

(4) How often must I conduct an RRA? You must conduct an RRA once every four calendar quarters.

(i) How do I conduct an RRA? You must conduct the RRA by collecting three simultaneous RM PM concentration measurements and PM CEMS measurements at the as-found source operating conditions and PM concentration.

(ii) Paired trains for the RM sampling are not required but are recommended to avoid failing the test due to imprecise and inaccurate RM results.

(5) When do I need to run an RCA? You must conduct an RCA at the frequency specified in the applicable regulation or facility operating permit.

(i) How do I conduct an RCA? You must conduct the RCA test according to the procedures described in PS–11 section 8.6, except that the minimum number of runs required is 12 in the RCA instead of 15 as specified in PS–11.

(ii) All 12 data points must lie within the PM CEMS output range examined during the PM CEMS correlation tests.

(6) What other alternative audits can I use? You can use other alternative audit procedures as approved by us, the State or local agency for the quarters when you would conduct ACAs.

10.4 What are my limits for excessive audit inaccuracy? Unless specified otherwise in the applicable subpart, the criteria for excessive inaccuracy are listed in paragraphs (1) through (6).

(1) What are the criteria for excessive zero or upscale drift? Your PM CEMS is out of control if either the zero drift check or upscale drift check exceeds 4 percent for five consecutive daily periods, or exceeds 8 percent for any one day.

(2) What are the criteria for excessive sample volume measurement error? Your PM CEMS is out of control if sample volume check error exceeds 10 percent for five consecutive daily periods, or exceeds 20 percent for any one day.

(3) What are the criteria for excessive absolute correlation audit error? Your PM CEMS is out of control if results exceed ± 10 percent of the average audit value or 7.5 percent of the applicable standard, whichever is greater.

(4) What is the criterion for excessive sample volume audit error? Your PM CEMS is considered out of control if results exceed ± 5 percent of the average sample volume audit value.

(5) What is the criterion to pass the relative correlation audit? At least 75 percent of a minimum number of 12 sets of PM CEMS and RM measurements must fall within a specified area on a graph of the correlation regression line. The specified area on the graph of the correlation regression line is two lines parallel with the correlation regression line, offset at a distance of ± 25 percent of the numerical emission limit value from the correlation regression line. If your PM CEMS fails to meet this RCA criterion, it is considered out of control.

(6) What is the criterion to pass the relative response audit? At least two of the three sets of PM CEMS and RM measurements must fall within the same specified area on a graph of the correlation regression line as required for the RCA. If your PM CEMS fails to meet this RRA criterion, it is considered out of control.

10.5 What do I do if my PM CEMS is out of control? You must take the actions listed in paragraphs (1) and (2) if your PM CEMS is out of control.

(1) You must take necessary corrective action to eliminate the problem and perform tests as appropriate to assure that the corrective action was successful.

(i) Following corrective action, you must repeat the previously failed audit to confirm that your PM CEMS is operating within the specifications.

(ii) If your PM CEMS failed an RRA, you must take corrective action until your PM CEMS passes the RRA criteria. If the RRA criteria cannot be achieved, you must perform an RCA.

(iii) If your PM CEMS failed an RCA, you must follow procedures defined in section 10.6.

(2) You must report both the audit showing your PM CEMS to be out of control and the results of the audit following corrective action showing your PM CEMS to be operating within specifications.

10.6 What do I do if my PM CEMS fails an RCA? After an RCA failure, you must take all applicable actions listed in paragraphs (1) and (2).

(1) Combine RCA data with data from the active PM CEMS correlation and perform the mathematical evaluations defined in PS–11 for development of a PM CEMS correlation including examination of alternate forms of the curve fit (*e.g.,* linear, polynomial, and logarithmic fits). If the expanded data base and revised correlation meet PS–11 statistical criteria, use the revised correlation.

(2) If the criteria in paragraph (1) of this section are not achieved, you must develop a new PM CEMS correlation based on revised data. The revised data set must consist of the test results from only the RCA. The new data must meet all requirements of PS–11 to develop a revised PM CEMS correlation. Your PM CEMS is considered to be back in controlled status when the revised correlation meets all statistical criteria of PS–11.

(3) If the actions in paragraphs (1) and (2) of this section do not result in an acceptable correlation, you must evaluate the cause(s)and comply with the actions listed in paragraphs (i) through (iv) within 90 days after the completion of the failed RCA.

(i) Completely inspect your PM CEMS for mechanical or operational problems. If you find a mechanical or operational problem, repair your PM CEMS and repeat the RCA.

(ii) You may need to relocate your PM CEMS to a more appropriate measurement location. If you relocate your PM CEMS, you must perform a new correlation test according to PS–11 procedures.

(iii) The characteristics of the PM or gas in your source's flue gas stream may have changed such that your PM CEMS measurement technology is no longer appropriate. If this is the case, you must install a PM CEMS with measurement technology that is appropriate for your source's flue gas characteristics. You must perform a new correlation test according to PS–11 procedures.

(iv) If the corrective actions in paragraphs (i) through (iii) were not successful, you must petition us, the State or local agency for approval of alternative criteria or an alternative for continuous PM monitoring.

10.7 When does the out of control period begin and end? The out of control period begins immediately after the last test run or check of an unsuccessful RCA, RRA, ACA, SVA, drift check, or sample volume check. The out of control period ends immediately after the last test run or check of the subsequent successful audit or drift check.

10.8 What happens to my PM CEMS data during out of control periods? During the period the PM CEMS is out of control, you may not use your PM CEMS data to calculate emission compliance or to meet minimum data availability requirements described in the applicable regulation.

10.9 What are the QA/QC reporting requirements for my PM CEMS? You must report the accuracy results from section 10 for your PM CEMS at the interval specified in the applicable regulation. Report the drift and accuracy information as a Data Assessment Report (DAR), and include one copy of this DAR for each quarterly audit with the report of emissions required under the applicable regulation. An example DAR is provided in Procedure 1, Appendix F of this Part.

10.10 What minimum information must I include in my DAR? As a minimum, you must include the information listed in paragraphs (1) through (5) in the DAR.

(1) Your name and address.

(2) Identification and location of monitors in your CEMS.

(3) Manufacturer and model number of each monitor in your CEMS.

(4) Assessment of PM CEMS data accuracy/acceptability, and date of assessment, as determined by an RCA, RRA, ACA, or SVA described in section 10, including the acceptability determination for the RCA or RRA, the accuracy for the ACA or SVA, the

RM results, the audit standards, your PM CEMS responses, and the calculation results as defined in section 12. If the accuracy audit results show your PM CEMS to be out of control, you must report both the audit results showing your PM CEMS to be out of control and the results of the audit following corrective action showing your PM CEMS to be operating within specifications.

(5) Summary of all corrective actions you took when you determined your PM CEMS to be out of control, as described in sections 10.5 and 10.6.

10.11 Where and how long must I retain the QA data that this procedure requires me to record for my PM CEMS? You must keep the records required by this procedure for your PM CEMS onsite and available for inspection by us, the State and or local enforcement agency for a period of 5 years.

11.0 What Analytical Procedures apply to This Procedure?

Sample collection and analysis are concurrent for this procedure. You must refer to the appropriate RM for the specific analytical procedures.

12.0 What Calculations and Data Analysis Must I Perform for My PM CEMS?

(1) How do I determine RCA and RRA acceptability? You must plot each of your PM CEMS/RM data from the RCA test or the RRA test on a figure based on your PM CEMS correlation line to determine if the criterion in paragraphs 10.4(5) or (6), respectively, is met.

(2) How do I calculate ACA Accuracy? You must use Equation 2–1 to calculate results from the ACA tests for each of the three audit points.

$$\text{ACA Accuracy} = \frac{|R_{CEM} - R_V|}{R_V} \times 100 \qquad \text{[Eq. 2-1]}$$

Where:

ACA Accuracy = The ACA accuracy at each audit point, in percent,

R_{CEM} = Your PM CEMS response to the reference standard, and

R_V = The reference standard value.

(3) How do I calculate daily upscale and zero drift? You must calculate the upscale drift (UD) according to Equation 2–2 and the zero drift (ZD) according to Equation 2–3.

$$UD = \frac{|R_{CEM} - R_V|}{R_V} \times 100 \qquad \text{[Eq. 2-2]}$$

Where:

UD = The upscale drift of your PM CEMS, in percent,

R_{CEM} = Your PM CEMS response to the upscale check value, and

R_V = The upscale check value.

$$ZD = \frac{|R_{CEM} - R_L|}{R_V} \times 100 \qquad \text{[Eq. 2-3]}$$

Where:

ZD = The zero (low level) drift of your PM CEMS, in percent,

R_{CEM} = Your PM CEMS response of the zero check value,

R_L = The zero check value, and

R_V = The upscale check value.

(4) How do I calculate SVA Accuracy? You must use Equation 2–4 to calculate accuracy, in percent, for each of the three SVA tests or the daily sample volume check:

$$\text{Accuracy} = \frac{(V_R - V_M)}{V_R} \times 100 \qquad \text{[Eq. 2-4]}$$

Where:

V_M = Sample gas volume determined/reported by your PM CEMS (e.g., dscm) and

V_R = Sample gas volume measured by the independent calibrated reference device (e.g., dscm) for the SVA or the reference value for the daily sample volume check.

Note: You must calculate/correct the volume values above to the same basis of temperature, pressure and moisture contents. You must document all data and calculations.

(5) How do I calculate relative standard deviation (RSD)? You must use Equation 2–5 to calculate the RSD for two simultaneously gathered data points (population relative standard deviation).

$$RSD = 100 \times \frac{|(C_a - C_b)|}{(C_a + C_b)} \qquad \text{[Eq. 2-5]}$$

Where:

C_a and C_b = Concentration values, mg/dscm, determined from trains A and B, respectively.

13.0 *Method Performance.* [Reserved]

14.0 *Pollution Prevention.* [Reserved]

15.0 *Waste Management.* [Reserved]

16.0 *Which References Are Relevant to This Method?* [Reserved]

17.0 *What Tables, Diagrams, Flowcharts, and Validation Data Are Relevant to This Method?* [Reserved]

[FR Doc. 01–30367 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IA 0144–1144; FRL–7117–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the state of Iowa's section 111(d) plan for controlling emissions from existing hospital/medical/infectious waste incinerators.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as noncontroversial and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. 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. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by January 11, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: December 2, 2001.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 01–30739 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IA 0143–1143; FRL–7117–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the state of Iowa's section 111(d) plan for controlling emissions from existing municipal solid waste landfills.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as noncontroversial and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. 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. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by January 11, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: December 2, 2001.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 01–30737 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 66, No. 239

Wednesday, December 12, 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

Office of the Secretary

Privacy Act of 1974; Amendment of Existing System of Records; USDA/FS–26, Trespass and Claims

AGENCY: Office of the Secretary, USDA.

ACTION: Notice; amendment of system of records; request for comments.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the U.S. Department of Agriculture is proposing to amend its existing system of records entitled USDA/FS–26, Trespass and Claims, to add new routine uses. USDA invites public comment on this publication.

DATES: *Effective Date:* These system amendments will be adopted without further notice on February 11, 2002, unless modified by a subsequent notice to incorporate comments received from the public.

Comment Date: Comments must be received on or before January 11, 2002.

ADDRESSES: Send written comments to the Director, Financial Management (MAIL STOP 1139), Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090. Those who submit comments should be aware that all comments, including names and addresses when provided, are placed in the record and are available for public inspection. Individuals wishing to inspect comments are encouraged to call (703) 605–4763 to make arrangements.

FOR FURTHER INFORMATION CONTACT: Janet Arling, Financial Management Staff, Forest Service, at (304) 636–1800, ext. 208.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, the U.S. Department of Agriculture is proposing to amend USDA/FS–26, an existing system of records maintained by the Forest Service. The amendment will add a new routine use to conform this system of records with the Debt Collection Improvement Act of 1996 and, thus, allow referral of legally enforceable debts to the Department of the Treasury for the purpose of participating in the Treasury Offset Program and Cross-Servicing Program as required by section 31001 of the Debt Collection Improvement Act of 1996, Public Law 104–134 (31 U.S.C. 3711).

Other changes to the routine uses include expanding the purposes for which disclosure of these records may be made to the Department of Justice to include requesting legal advice; adding disclosure to a court or other tribunal when the Agency is party to or has interest in litigation and when the Agency determines the records are relevant and necessary and disclosure is compatible with the purpose for which the Agency collected the records; adding disclosure to a State or local government in an effort to recoup debts owed the Government; and adding disclosure to the Department of the Treasury for publication in Notice of Delinquent Debtors.

The system locations are being changed by adding the offices of Forest Supervisors and District Rangers. Other changes to the system of records include adding a purpose statement, clarifying the categories of records in this system, and updating authorities for maintaining the system.

In accordance with the Privacy Act and OMB Circular A–130, the Department of Agriculture has provided a report on this revised system of records to the Office of Management and Budget (OMB) and to the Congress.

A copy of the amended system of records is set out at the end of this notice. Although the Privacy Act only requires a Federal agency to solicit comments from the public with respect to changes in a system's routine use, the Department of Agriculture invites comments on all portions of this notice.

Dated: December 5, 2001.

Ann M. Beneman,

Secretary of Agriculture.

USDA/FS–26

SYSTEM NAME:

Trespass and Claims, USDA/FS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

These records are located at the Forest Service offices of the Chief, the Regional Foresters, Forest and Rangeland Experiment Station Directors, the Directors of the Forest Products Laboratory and the International Institute of Tropical Forestry, the Northeastern Area Director, Forest Supervisors, and District Rangers. The addresses of these offices are listed in 36 CFR part 200, subpart A, or in local telephone directories under the heading ''United States Government, Department of Agriculture, Forest Service.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who file claims against the Forest Service pursuant to the Federal Tort Claims Act, the Military Personnel and Civilian Employees' Claims Act of 1964, and the various Forest Service Claims Acts; individuals against whom the Forest Service has claims; and individuals who claim title to National Forest System lands pursuant to the Adjustment of Land Titles Act, Quiet Claim Act, Color of Title Act, Wisconsin Land Title Act, or the Real Property-Quiet Title Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of files on individual claims, information on the circumstances of the loss for which the claimant is seeking relief or the circumstances of the loss for which the Government is seeking relief, opinions of the Office of the General Counsel, and disposition of the case. The files also include claim forms, police reports, investigation and accident reports, statements of witnesses, agency reports, financial data, Social Security or employer identification numbers, bank routing and account numbers, and electronic fund transfer information of individuals subject to a claim of the Forest Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 7 U.S.C. 1921, 2253; 16 U.S.C. 502, 556c and 574; 28 U.S.C. 2409a and 2671–2680; 31 U.S.C. 3701, 3711, 3721, 3723, 42 U.S.C. 1471, and 43 U.S.C. 872, 1068 and 1221.

PURPOSE(S):

The purpose of this system of records is to maintain (1) records related to debts owed the agency to ensure the agency and the United States will obtain

payment and (2) administrative files of claims submitted against the agency to provide for legal determinations made in regard to these claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclose information concerning constituents, who are delinquent debtors, to a Member of Congress or to a Congressional staff member in response to an inquiry generated by the written request of the constituent about whom the record is maintained.

2. Disclose information to the Department of Justice (DOJ), or to a court or other tribunal, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States is party to litigation or has an interest in such litigation and by careful review, the agency determines that the records are both relevant and necessary to the litigation and in each case, the agency determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the agency collected the records. Disclosure may also be made to the DOJ when the DOJ is requested to provide legal advice to the agency or is contemplating representing the agency in proposed litigation.

3. Disclose information concerning delinquent debtors to the Department of Justice for the purpose of litigating to enforce collection of a delinquent debt or to obtain the concurrence in a decision to compromise, suspend, or terminate collection action on a debt with a principal amount in excess of $100,000 or such higher amount as the Attorney General may, from time to time, prescribe in accordance with 31 U.S.C. 3711(a).

4. Disclose information concerning delinquent debtors to the U.S. Department of the Treasury, Financial Management Service, and to any other debt collection center designated by the Secretary of the Treasury, or any debt collection contractor for the purpose of collecting the debt by cross servicing in accordance with 31 U.S.C. 3711(m).

5. Disclose information concerning delinquent debtors to the U.S Department of the Treasury, Financial Management Service, or to any other debt collection center designated by the Secretary of the Treasury, or any federal agency for the purpose of collecting the debt through offset under 31 U.S.C. 3716 (administrative offset), 31 U.S.C. 3720A (Tax refund offset), 5 U.S.C. 5514 (salary offset), or offset under any other statutory or common law authority.

6. Disclose information concerning delinquent debtors to other Federal agencies for the purpose of implementing 31 U.S.C. 3720B, which prohibits persons who are delinquent on Federal debts from obtaining Federal financial assistance in the form of loans or loan insurance or guaranties.

7. Disclose information concerning delinquent debtors to any employer of the debtor for the purpose of conducting administrative wage garnishment pursuant to 31 U.S.C. 3720D.

8. Disclose information concerning delinquent debtors to other Federal agencies or the public for the purpose of selling the debt pursuant to 31 U.S.C. 3711(i).

9. Disclose information or publicly disseminate information concerning delinquent debtors and the debt to the public for the purpose of publicly disseminating information regarding the identity of the debtor pursuant to 31 U.S.C. 3720E.

10. Disclose information concerning delinquent debtors to State and local governments in an effort to collect debts owed the Federal Government.

11. Disclose information concerning delinquent debtors to the Internal Revenue Service for the purposes of effecting an administrative offset against the debtor's income tax refund to recover a delinquent debt owed to the United States by the debtor, or obtaining the mailing address of a taxpayer/debtor in order to locate the taxpayer/debtor to collect or compromise a Federal claim against the taxpayer/debtor in accordance with 31 U.S.C. 3711, 3717, 3728 and 3718 and 26 U.S.C. 6103(m)(2) and 6402.

12. Disclose information concerning delinquent debtors to the Department of Defense or the U.S. Postal Service or other Federal agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, so as to identify and locate individuals receiving Federal payments (including, but not limited to, salaries, wages, and benefits) for the purpose of requesting voluntary repayment or implementing Federal employee salary offset or administrative offset procedures.

13. Disclose information concerning delinquent debtors to the Department of Defense or the U.S. Postal Service or other Federal agency for the purpose of participating in computer matching programs to effect an administrative offset against Federal payments certified to be paid to the debtor to recover a delinquent debt owed to the U.S. Government by the debtor.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): The agency may disclose to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act (31 U.S.C. 3701(A)(3)), information concerning overdue claims from this system of records that is necessary to establish the identity of the debtor, including name, address, and taxpayer identification number; amount, status, and history of the debt or claim; and the program under which the debt or claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, while active. Closed files are retained for the required retention period. Closed files are electronically scanned, and the information is retained on magnetic disk for the required retention period. Closed paper files are appropriately destroyed. An electronic subset of delinquent debts due the Government is maintained for transmission to the Department of the Treasury for cross servicing in accordance with 31 U.S.C. 3711(m). Authorized personnel may access this data.

RETRIEVABILITY:

Records are indexed and retrieved by the name of the individual claimant or debtor. Data may be retrieved from the paper records, magnetic disk, or electronic files.

SAFEGUARDS:

Records are kept in a locked office. A limited subset of data is maintained in an on-line retrieval system. Access is restricted to authorized Forest Service and Department of the Treasury personnel. A system of operator and terminal passwords is used to restrict access to the on-line system. Passwords are changed as necessary.

RETENTION AND DISPOSAL:

Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 366–380) and retained until the court order is lifted, litigation is concluded, or up to 10 years 3 months have elapsed, whichever is greater.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management, Forest Service, U.S. Department of Agriculture, PO Box 96090, Washington DC 20090–6090, or the appropriate

Director of Financial Management at the addresses specified under System Location.

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him or her from the Director, Financial Management, Forest Service, U.S. Department of Agriculture, Washington, DC, or the appropriate Director of Financial Management at the address identified under System Location. If the specific location of the records is not known, the individual should address a request to the Director of Financial Management in Washington, DC. The request should be in writing and should contain name, address, and particulars of the claim.

RECORD ACCESS PROCEDURES:

Use same procedures as those prescribed in Notification Procedures.

CONTESTING RECORD PROCEDURES:

Use same procedures as those prescribed in Notification Procedures.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from the claimant, the claimant's or debtor's attorney or legal representative, witnesses, agency employees, and local and federal investigation personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–30658 Filed 12–11–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

National Research Initiative Competitive Grants Program

AGENCY: Cooperative State Research, Education, and Extension Service (CSREES).

ACTION: Notice to Re-submit Applications for the FY 2002 National Research Initiative Competitive Grants Program (NRICGP).

SUMMARY: Applicant institutions that have not received confirmation of receipt of NRICGP proposals sent in response to the November 15, 2001, deadline are requested to re-submit their proposals. Re-submitted proposals are due no later than close of business on December 21, 2001.

SUPPLEMENTARY INFORMATION: On August 16, 2001, (66 FR 43048) CSREES announced the availability of the FY 2002 solicitation for applications which is entitled the ''NRI Program Description and Guidelines for Proposal Preparation'' for the National Research Initiative Competitive Grants Program. The solicitation invited applications for competitive grant awards in agricultural, forest, and related environmental sciences for FY 2002, and required that proposals be postmarked or delivered on or before dates provided in the table at the end of the notice. Proposals for the following Program Areas were due on or before November 15, 2001:

- Plant Responses to the Environment, Code 22.1
- Managed Ecosystems, Code 23.1
- Soils and Soil Biology, Code 25.0
- Watershed Processes and Water Resources, Code 26.0
- Improving Human Nutrition for Optimal Health, Code 31.0
- Biology of Weedy and Invasive Plants, Code 51.9

Because of problems with mail delivery at the time of the November 15th deadline, CSREES is not confident it received all applications. CSREES thus requests that applicant institutions that have not received confirmation of receipt of applications submitted to meet the November 15, 2001, NRICGP deadline re-submit applications by close of business on December 21, 2001. To avoid duplicate submissions, CSREES will confirm delivery with the institutional Authorized Organization Representative (AOR) of applications delivered successfully at the November 15th NRICGP deadline. If the submitting institution is not contacted by CSREES, the institution should assume that the application(s) were not received and should re-submit them.

DATES: Re-submitted proposals are due no later than close of business on December 21, 2001. All other NRICGP deadlines are retained as published in the FY 2002 Program Description.

ADDRESSES: An original and 14 copies of the re-submitted proposals must be sent via commercial overnight delivery service only, and shipped to the following address: NRI; c/o Proposal Services Unit; Cooperative State Research, Education and Extension Service; U.S. Department of Agriculture; Room 1307, Waterfront Centre; 800 9th Street, SW.; Washington, DC 20024; telephone: (202) 401–5048.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Donatone, Team Leader, Proposal Services Unit; phone: (202) 401–5048; E-mail: *psb@reeusda.gov.*

Additional information concerning this issue is posted on the Agency's Web site at: *www.reeusda.gov.*

Done at Washington, DC this 7th day of December, 2001.

Gary Cunningham,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 01–30777 Filed 12–7–01; 4:23 pm]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Livestock Grazing Permit Re-issuance on the Horse Butte Allotment Gallatin National Forest, Gallatin County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of continued livestock grazing of up to 263 cow/calf pairs and horses on a Gallatin National Forest grazing allotment located on the Horse Butte peninsula near West Yellowstone, Montana (hereafter referred to as the Horse Butte Allotment). Grazing would occur from June through mid-October annually under a seasonally deferred rotation schedule. Grazing permits establish the amount, duration, location, and circumstances (management constraints) under which grazing will be allowed on the National Forest.

DATES: Written comments and suggestions should be received within 30 days following publication of this notice.

ADDRESSES: Submit written comments and suggestions on this proposal or a request to be placed on the project mailing list to Tris Hoffman, Hebgen Lake Ranger District, Gallatin National Forest, PO Box 520, West Yellowstone, Montana, 59758.

FOR FURTHER INFORMATION CONTACT: Tris Hoffman, EIS Team Leader, Hebgen Lake Ranger District, Phone (406) 823–6966.

SUPPLEMENTARY INFORMATION: The Horse Butte allotment covers approximately 2065 acres of the Horse Butte Peninsula between the Grayling and Madison Arms of Hebgen Lake. The allotment is located approximately 8 miles northwest of West Yellowstone, Montana. It is bordered by private land along much of its eastern boundary. The allotment is comprised of six pastures. Five of the six pastures are currently, and proposed to be, managed under a seasonally deferred rotation system, 58% of which is primary range and

about 37% is secondary range. The sixth pasture, the Grayling Unit, is an on-off pasture. This pasture involves 3 separate parcels of Forest Service property (totaling 65 acres) that are used in combination with adjacent private property. The on-off parcels are currently authorized as continuous grazing.

Comments will be used to identify issues that should be addressed in environmental analysis. The analysis is being conducted in compliance with the National Environmental Policy Act (NEPA) and is designed to inform the Responsible Official of the potential environmental consequences of continued livestock grazing on this allotment. The Responsible Official for this decision is the Hebgen Lake District Ranger. The analysis will also advise of any changes in grazing practices that should be considered.

Cattle grazing around the West Yellowstone area is recognized to be controversial since it influences management practice adopted to prevent the transmission of brucellosis to cattle from bison migrating out of Yellowstone Park (Interagency Bison Management Plan, 12/2000).

The purpose of proposing re-issuance of a livestock grazing permit on the Horse Butte allotment is to continue to allow for this economic activity. Livestock grazing has been an important use of lands within and around the Gallatin National Forest since the 1800's. Grazing has been authorized since the formation of the Gallatin National Forest in the early 1900's and it continues to be an important part of the region's economy today. The Gallatin Forest Plan (1987) set goals and objectives for management of rangeland habitats and livestock grazing. The applicable management area goal for this are is to provide forage for livestock consistent with meeting grizzly bear mortality reduction goals as established by the Interagency Grizzly Bear Committee (Forest Plan, MA 15, pg. III–47). The decision to be made now is whether to re-issue the livestock grazing permit and if so, under what conditions.

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative, in which none of the proposed activities would be implemented. The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered.

The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. No public meetings are scheduled at this time. Comments from the public and other agencies will be used in preparation of a Draft EIS.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in the fall of 2003. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposal participate at that time. The Final EIS is scheduled to be completed by summer of 2004.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives. To assist the Forest Service is identifying and considering issues, comments should be as specific to this proposal as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Gallatin National Forest, PO Box 130, Federal Building, Bozeman, MT 59771.

Dated: December 6, 2001.

Rebecca Heath,

Forest Supervisor, Gallatin National Forest.

[FR Doc. 01–30664 Filed 12–11–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet on January 9, 2001 in Redding, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on January 9, 2002 from 8 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Shasta-Trinity National Forest Headquarters Conference Room, 2400 Washington Ave., Redding, California.

FOR FURTHER INFORMATION CONTACT: Jim Pena, Designated Federal Official, USDA, Shasta-Trinity National Forest, 2400 Washington Ave., Redding, CA 96001. Phone: (530) 242–2201. E-mail: *jpena@fs.fed.us.*

SUPPLEMENTARY INFORMATION: This will be the second meting of the committee, and will focus on developing an overall strategy for selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 4, 2001.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 01–30643 Filed 12–11–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee (RAC); Meeting

AGENCY: USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on January 7, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II

projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on January 7, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta-Trinity National Forest, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–2121. E-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: This will be the third meeting of the committee and will focus on developing an overall strategy for selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 4, 2001.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 01–30642 Filed 12–11–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

South Mississippi Electric Power Association; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request from South Mississippi Electric Power Association for assistance to finance the construction of a 255 megawatt electric generating station in Jefferson Davis County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–0468, fax (202) 720–0820, e-mail at *bquigel@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: No comments were received by RUS via e-mail or telephone during the 30-day comment period which closed on November 30, 2001. However, mail service to the U.S. Department of Agriculture has been disrupted during the comment period due to screening of mail for potential anthrax contamination. Any person that sent written comments on the environmental assessment through the U.S. Postal Service to RUS during the comment period should contact RUS at the telephone number listed above within 5 working days of this notice to ensure their comments are considered prior to project construction. Should RUS conclude that any written comments that may have been submitted during the official comment period warrant further review and would cause reconsideration of RUS' decision, the public would be so notified. Otherwise, this FONSI notice will serve as the final public notice of this project.

The project is to be named the Silver Creek Generating Station. South Mississippi Electric Power Association proposes to construct the generating station. The station site is located approximately 6 miles east of Silver Creek in Jefferson Davis County, Mississippi. The plant and associated facilities will include 3 GE 7EAs, a 115 kV switchyard and substation, approximately 6 miles of 115 kV transmission line, a natural gas metering station, and approximately 0.5 miles of natural gas pipeline.

Copies of the FONSI are available for review at, or can be obtained from, RUS at the address provided herein or from Mr. Joey Ward, South Mississippi Electric Power Association, 7037 U.S. Highway 49, North, Hattiesburg, Mississippi 39404–5849, telephone (601) 268–2083. Mr. Ward's e-mail address is *jward@smepa.com.*

Alfred Rodgers,

Acting Assistant Administrator, Electric Program.

[FR Doc. 01–30743 Filed 12–11–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

South Mississippi Electric Power Association; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request from South Mississippi Electric Power Association for assistance to finance the construction of a 129 megawatt electric generating station in Smith County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–0468, fax (202) 720–0820, e-mail at *bquigel@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: No comments were received by RUS via e-mail or telephone during the 30-day comment period which closed on November 10, 2001. However, mail service to the U.S. Department of Agriculture has been disrupted during the comment period due to screening of mail for potential anthrax contamination. Any person that sent written comments on the environmental assessment through the U.S. Postal Service to RUS during the comment period should contact RUS at the telephone number listed above within 5 working days of this notice to ensure their comments are considered prior to project construction. Should RUS conclude that any written comments that may have been submitted during the official comment period warrant further review and would cause reconsideration of RUS' decision, the public would be so notified. Otherwise, this FONSI notice will serve as the final public notice of this project.

The project is to be named the Sylvarena Generating Station. South Mississippi Electric Power Association proposes to construct the generating station. The station site is located approximately 3 miles southwest of Sylvarena in Smith County, Mississippi. The plant and associated facilities will include 3 General Electric LM6000 simple cycle combustion turbines, a 69 kV electrical switchyard and substation, approximately 7 miles of new 69 kV transmission line, rebuilding and upgrading of existing 69 kV transmission lines, a natural gas metering station, approximately 1.5 miles of natural gas pipeline, and a guyed microwave tower.

Copies of the FONSI are available for review at, or can be obtained from, RUS at the address provided herein or from Mr. Joey Ward, South Mississippi Electric Power Association, 7037 U.S. Highway 49, North, Hattiesburg, Mississippi 39404–5849, telephone

(601) 268–2083. Mr. Ward's e-mail address is *jward@smepa.com.*

Alfred Rodgers,

Acting Assistant Administrator, Electric Program.

[FR Doc. 01–30744 Filed 12–11–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: TPCC Benchmarking Exercise.

Agency Form Number: N/A.

OMB Number: None.

Type of Request: Emergency Submission.

Burden: 715 hours.

Number of Respondents: 2500.

Avg. Hours Per Response: 5 minutes to 1.5 hours.

Needs and Uses: The Trade Promotion Coordinating Committee (TPCC) chaired by Commerce Secretary Evans is conducting a benchmarking exercise of federal trade promotion programs. The goal of this exercise is to ensure that U.S. government agencies provide exporters with world-class services that enable them to take full advantage of new market openings. The benchmarking exercise is comprised of the following two parts: (1) an analysis of other countries export promotion and financing efforts; and (2) an assessment of what U.S. businesses need to export. The assessment will be based on a survey of exporters' needs and a set of focus group interviews with TPCC agency program users. The information we collect will help us to determine what other organizations help small businesses (and get a sense of who does it well), what the export assistance needs of small business exporters are, why don't more small business export, and if there is a trade financing problem. The survey and focus groups will also address how small businesses are using the Internet for exporting. In March 2002, Secretary Evans will present the TPCC's National Export Strategy to Congress, laying out recommendations based on this exercise to improve and streamline TPCC agency programs and services.

Affected Public: Businesses or other for-profits.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution, NW., Washington, DC 20230 or via Internet at *MClayton@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: December 6, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer,Office of the Chief Information Officer.

[FR Doc. 01–30632 Filed 12–11–01; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Final Results of the Fourth Countervailing Duty Administrative Review

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

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is issuing the final results of the fourth administrative review of the countervailing duty order on certain pasta from Italy for the period January 1 through December 31, 1999.

Based on information received since the preliminary results and our analysis of the comments received, the Department of Commerce, ''the Department,'' has revised the net subsidy rates for Agritalia S.r.L., Pastificio Antonio Pallante S.r.L. (''Pallante''), N. Puglisi & F. Industria Paste Alimentari S.p.A. (''Puglisi''), and Pastificio Riscossa F.lli Mastromauro S.r.L. (''Riscossa''). Therefore, the final results differ from the preliminary results. The final net subsidy rates for the reviewed companies are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: December 12, 2001.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Sally Hastings, Andrew Covington, or Meg Weems, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1780, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1778, 482–3464, 482–3534, and 482–2613, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA''), effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 *et seq.* (2000).

Background

On July 24, 1996, the Department of Commerce (''the Department'') published in the **Federal Register** (61 FR 38544) the countervailing duty order on certain pasta from Italy.

In accordance with 19 CFR 351.213(b), this review of the order covers the following producers or exporters of the subject merchandise for which a review was specifically requested: Agritalia; F.lli De Cecco di Filippo Fara S. Martino S.p.A. (''De Cecco''); Delverde S.p.A. (''Delverde''); De Matteis Agroalimentare S.p.A. (''De Matteis''); Pallante; Pastificio Maltagliati S.p.A. (''Maltagliati''); P.A.M. S.r.L.—Prodotti Alimentari Meridionali (''PAM'') (PAM is also responding for Pastificio Liguori dal 1820, S.p.A.); Riscossa; Puglisi; and Rummo S.p.A. Molino e Pastificio (''Rummo'').

Based on withdrawals of the requests for reviews, we rescinded this administrative review for Arrighi S.p.A. Industrie Alimentari; Audisio Industrie Alimentari de Capitanata, S.p.A.; Commercio-Rappresentanze-Export S.r.L.; Indalco; Industria Alimentare Colavita, S.p.A.; Isola del Grano S.r.L.; Italpast S.p.A.; Italpasta S.r.L.; Labor S.r.L.; La Molisana Alimentari S.p.A.; Molino e Pastificio; Pastificio Campano, S.p.A.; Pastificio di Matino Gaetano & F.lli S.r.L.; Pastificio Fabianelli, S.p.A.; Pastificio F.lli Pagani; Pastificio Guido Ferrara; and, Tamma Industrie Alimentari di Capitanata, S.r.L. (*See, Certain Pasta from Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review,* 66 FR 40987 (August 6, 2001) (''*Preliminary Results*'').)

Since the publication of the *Preliminary Results* the following events

have occurred. Supplemental questionnaires were sent to Rummo on August 30, 2001; Puglisi on September 7, 2001; Delverde, Pallante, Riscossa and the Government of Italy (''GOI'') on September 27, 2001; and Agritalia on October 2, 2001. Responses were received from Rummo on September 21, 2001; Pallante, Riscossa, GOI and Agritalia on October 9, 2001; and Delverde on October 10, 2001.

Case briefs were submitted on October 22, 2001, by Agritalia, Delverde, DeMatteis, Pallante, Puglisi, and Riscossa. The Department did not conduct a hearing in this review because none was requested.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, Bioagricoop Scrl, QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the countervailing duty order.(*See* August 25, 1997 memorandum from Edward Easton to Richard Moreland, which is on file in the Central Records Unit (''CRU'') in Room B–099 of the main Commerce building.)

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the countervailing duty order. (*See* July 30, 1998 letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., which is on file in the CRU.)

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the countervailing duty order. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the countervailing duty order. (*See* May 24, 1999 memorandum from John Brinkmann to Richard Moreland, which is on file in the CRU.)

The following scope ruling is pending:

On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). See *Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders,* (May 5, 2000).

Period of Review

The period of review (''POR'') for which we are measuring subsidies is from January 1 through December 31, 1999.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the December 4, 2001 *Issues and Decision Memorandum* (''*Decision Memorandum*'') from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Bernard Carreau, Acting Assistant Secretary for Import Administration, which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum.* Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the CRU, Room B–099 of the Department. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/* under the heading ''Italy.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on information received subsequent to the *Preliminary Results* and our analysis of comments submitted in the case briefs, we have made changes in our calculation of the net subsidies for Agritalia, Pallante, Puglisi and Riscossa. These changes are discussed in the relevant sections of the *Decision Memorandum.*

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1 through December 31, 1999, we determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below.

Company	Ad valorem rate (percent)
Agritalia S.r.L	2.92
F.lli De Cecco di Filippo Fara San Martino, S.p.A	2.21
Delverde S.p.A./Delverde S.r.L	3.27
De Matteis Agroalimentare S.p.A	2.33
Pastificio Antonio Pallante S.r.L	4.92
Pastificio Maltagliati S.p.A	3.85
P.A.M. S.r.L.—Prodotti Alimentari Meridionali	1.08
Pastificio Riscossa F.lli Mastromauro S.r.L	0.99
N. Puglisi & F. Industria Paste Alimentari S.p.A	7.18
Rummo S.p.A. Molino e Pastificio	1.26

We will instruct the Customs Service (''Customs'') to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentage detailed above of the f.o.b. invoice prices on all shipments of the subject merchandise from the producers/

exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

The cash deposit rates for all companies not covered by this review are not changed by the results of this review. Thus, we will instruct Customs to continue to collect cash deposits for non-reviewed companies, except Barilla G. e R. F.lli S.p.A. (''Barilla'') and Gruppo Agricoltura Sana S.r.L. (''Gruppo'') (which were excluded from the order during the investigation), at the most recent rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of the companies assigned these rates is completed. In addition, for the period January 1 through December 31, 1999, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry. This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.301. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: December 4, 2001.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues Discussed in the Decision Memorandum

I. Subsidies Valuation Methodology

1. Change in Ownership
2. Benchmarks for Long-term Loans and Discount Rates
3. Allocation Period
4. Attribution
5. Sales Values

II. Analysis of programs

A. Programs Previously Determined to Confer Subsidies

1. Law 64/86 Industrial Development Grants
2. Law 488/92 Industrial Development Grants
3. Law 183/76 Industrial Development Grants
4. Industrial Development Loans Under Law 64/86
5. Law 341/95 Interest Contributions on Debt Consolidation Loans
6. Law 598/94 Interest Subsidies
7. Social Security Reductions and Exemptions—Sgravi
8. IRAP Exemptions
9. Law 236/93 Training Grants
10. Law 304/90 Export Marketing Grants
11. European Regional Development Fund
12. Export Restitution Payments
13. Duty-free Import Rights

B. Programs Determined Not To Confer Countervailable Subsidies in the POR

1. IRPEG Exemptions
2. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77
3. ADAPT
4. Law 1329/65 Interest Contributions (Sabatini Law)
5. European Social Fund

C. Programs Determined to Be Not Used

1. Law 64/86 VAT Reductions
2. Export Credits under Law 227/77
3. Capital Grants under Law 675/77
4. Retraining Grants under Law 675/77
5. Interest Contributions on Bank Loans under Law 675/77
6. Interest Grants Financed by IRI Bonds
7. Preferential Financing for Export Promotion under Law 394/81
8. Urban Redevelopment under Law 181
9. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (''PRISMA'')
10. European Agricultural Guidance and Guarantee Fund (''EAGGF'')

III. Analysis of Comments

Comment 1: Sale of duty-free import rights (Agritalia)
Comment 2: Application of the Department's change in ownership methodology to Delverde (Delverde)
Comment 3: Presumption that subsidies continue after a change in ownership (Delverde)
Comment 4: Privatization and the U.K. Lead Bar Panel (Delverde)
Comment 5: Sale of shares vs. assets (Delverde)
Comment 6: Continuity of business operations (Delverde)
Comment 7: Sgravi repayment (Delverde)
Comment 8: Selection of 1999 sales values (Pallante)
Comment 9: Law 64/86 industrial development grants and loans (Pallante)
Comment 10: Sales by CE.S.A.P (Puglisi)
Comment 11: Failure to use company-specific discount rate for 1993 industrial development grant under Law 64/86 (Puglisi)
Comment 12: Failure to use company-specific interest rates for industrial development loans under Law 64/86 (Puglisi and DeMatteis)
Comment 13: Deduction of loan guarantee payments (Puglisi)
Comment 14: Deduction of interest payments on Law 64/86 industrial development grant advances (Puglisi)
Comment 15: Use of FOB sales values (Riscossa)
Comment 16: Attribution of benefits to pasta sales vs. sales of all product (Riscossa)

[FR Doc. 01–30749 Filed 12–11–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, Application No. 92–6A001.

SUMMARY: The Department of Commerce issued an amended Export Trade Certificate of Review to the Aerospace Industries Association of America, Inc. on December 4, 2001. Notice of issuance of the original Certificate was published in the **Federal Register** on April 17, 1992, (57 FR 13707).

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131, *oetca@ita.doc.gov*. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001 *et seq.*) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2000).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

The Aerospace Industries Association of America, Inc. (''AIA'') original Certificate was issued on April 10, 1992 (57 FR 13707, April 17, 1992) and last amended on November 12, 1998 (63 FR 64061, November 18, 1998).

AIA's Export Trade Certificate of Review has been amended to:

1. Add the following companies as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Groen Brothers Aviation, Inc., Salt Lake City, UT; i2 Technologies, Washington, DC; Martin-Baker America, Incorporated, Arlington, VA (Controlling Entity: Martin-Baker Aircraft Company Ltd., Denham, Buckinghamshire, UK); MatrixOne, Inc., Chelmsford, MA; MD Helicopters, Inc., Mesa, AZ; The NORDAM Group, Tulsa,

OK; Omega Air, Inc., Alexandria, VA (Controlling Entity: Omega Air, Dublin Airport, Ireland); Space Access, LLC, Palmdale, CA; Spectrum Astro, Inc., Gilbert AZ; Stellex Aerostructures, Inc., Woodland Hills, CA (Controlling Entity: Stellex Technologies, Inc., Woodland Hills, CA); Swales Aerospace, LLC, Beltsville, MD; Vought Aircraft Industries, Inc., Dallas, TX (Controlling Entity: The Carlyle Group, Washington, DC); W.L. Gore & Associates, Inc., Newark, DE; BAE Systems North America, Inc., Rockville, MD; GenCorp, Sacramento, CA; Smiths Group PLC, London, England, UK, for the activities of Smiths Aerospace Actuation Systems, Los Angeles, Duarte, CA; Triumph Group, Inc.; Wayne, PA; Analytical Graphics, Inc., Malvern, PA; Atlantic Research Corporation, Gainesville, VA (Controlling Entity: Sequa Corporation, New York, NY); Aviall, Inc., Dallas TX; Ball Aerospace & Technologies Corporation, Boulder, CO; Cubic Corporation, San Diego, CA; Curtiss-Wright Corporation, Lyndhurst, NJ; Dassault Falcon Jet Corporation, South Hackensack, NJ (Controlling Entity: Dassault Aviation, France); Davis Tool, Inc., Hillsboro, OR; DRS Technologies, Inc., Parsippany, NJ; Embraer Aircraft Corporation, Brazil; Exostar, LLC, Herndon, VA; Fairchild Dornier Corporation, Wessling, Germany; The Fairchild Corporation for the activities of Fairchild Fasteners, Dulles, VA; General Atomics Aeronautical Systems, Inc., San Diego, CA (Controlling Entity: General Atomics, San Diego, CA); Genuity Solutions, Inc., Woburn, MA; GKN Aerospace, Inc., Reston, VA (Controlling Entity: GKN Westland Aerospace division of GKN, PLC, Worcestershire, UK); ITT Industries, Inc., McLean, VA.

2. Delete the following companies as ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Aerojet-General Corporation, Sacramento, CA; Allied Signal Inc., Morristown, NJ; Hughes Electronic Corporation, El Segundo, CA; CMS, Inc., Tampa, FL; Coltech Industries, Inc., New York, NY; Digital Equipment Corporation, Maynard, MA; Cordant Technologies, Inc., Ogden, UT; Dowty Decoto, Inc., Duarte, CA; Dynamic Engineering Incorporated, Newport News, VA; Gulfstream Aerospace Corporation, Savannah, GA; Interturbine Corporation, Peabody, MA; ITT Defense and Electronics Inc., McLean, VA; Litton Industries, Inc., Woodland Hills, CA; Lucas Industries, Inc., Reston, VA; Marconi North America Inc., Wayne, NJ; Pacific Scientific Company, Duarte, CA; Sundstrand Corporation, Rockford, IL; Triumph Controls, Inc., North Wales, PA; Veridian Corporation, Alexandria, VA.

3. Change the listings of the current Members as follows: ''BF Goodrich; Akron, OH'' to ''Goodrich Corporation, Charlotte, NC''; ''HEICO Corporation, Hollywood, FL'' to ''HEICO Corporation; Miami, FL''; ''B.H. Aircraft Company, Incorporated, Farmingdale, NY'' to ''B.H. Aircraft Company, Incorporated, Rokonkoma, NY.''

Dated: December 5, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 01–30666 Filed 12–11–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Revised notice.

SUMMARY: This corrects dates shown for two Department of Commerce overseas trade missions listed in **Federal Register**, Vol. 66, No. 233, Tuesday, December 4, 2001, page 63019. The notice for these two trade missions should read:

The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated for each mission below. Recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

Benelux Environmental Technologies Trade Mission

The Hague, Netherlands, and Brussels Belgium,March 4–8, 2002,Recruitment closes on January 18, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. David Fiscus, U.S. Department of Commerce, telephone 202–482–1599, or e-mail David.Fiscus@mail.doc.gov.

Benelux Information and Communications Technology Trade Mission

Amsterdam, Netherlands, and Brussels Belgium,May 13–17, 2002,Recruitment closes on April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. David Fiscus, U.S. Department of Commerce, telephone 202–482–1599, or e-mail David.Fiscus@mail.doc.gov.

FOR FURTHER INFORMATION CONTACT: Thomas Nisbet, U.S. Department of Commerce, telephone 202–482–5657, or e-mail Tom_Nisbet@ita.doc.gov.

Dated: December 7, 2001.

Thomas H. Nisbet,

Director, Promotion Planning and Support Division,Office of Export Assistance and Business Outreach.

[FR Doc. 01–30758 Filed 12–11–01; 8:45 am]

BILLING CODE 3510–D–R–F–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government-Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

[NIST Docket Number: 96–006D]

Title: Method and Composition for Promoting Improved Adhesion to Substrates.

Abstract: The invention is jointly owned by the U.S. Government, as represented by the Secretary of Commerce, and the American Dental Association Health Foundation. The

Department of Commerce's ownership interest in this invention is available for licensing. An etchant primer composition is provided which includes (a) a compound having the formula RN $(CH_2YCO_2M)_2$ wherein R=R^1 or R^2; R^1= an aromatic group; R^2=a conjugated aliphatic group; Y=a single bond, CH_2, $CHCH_3$ or $C{=}CH_2$; and each M is independently H, an alkali metal, an alkaline earth metal, aluminum, a transition or redox metal or an alkyl group having 1 to 18 carbon atoms, with the proviso that when both M groups are alkyl groups, the compound corresponding to formula I be capable of being easily hydrolyzed, displaced or exchanged with other reagents present in the etchant/primer composition and (b) a polar solvent system. An etchant/primer/adhesive monomer composition is also provided which includes the etchant/primer composition and an adhesive monomer system. One and two step simplified methods for adhering and for preparing substrate surface, such as a dental substrate surface, to a polymeric material are also provided. Kits which may be used with these compositions and methods are also provided.

[NIST Docket Number: 97–036US]

Title: Silicon-on-Insulator Substrates Using Low Dose Implantation

Abstract: The invention is jointly owned by the U.S. Government, as represented by the Secretary of Commerce, and IBM Corp. The Department of Commerce's ownership interest in this invention is available for licensing. An SOI Substrate and method of forming is described incorporating the steps of implanting oxygen under two conditions and performing two high temperature anneals at temperatures above 1250.degree C. and above 1300.degree C, respectively, at two respective oxygen concentrations. The invention overcomes the problem of high SOI substrate fabrication cost due to ion implant time and of getting high quality buried oxide (BOX) layers below a thin layer of single crystal silicon.

[NIST Docket Number: 00–016US]

Title: Method and Apparatus for Entrainment Mixing of Vapor Into Liquids.

Abstract: Mixing of fluids is a central component to innumerable operations in chemical processing on the plant floor and also in many laboratory operations. Most mixing applications simply require the efficient blending of fluids present in a single phase, such as the mixing of the individual components of a liquid. For these applications, magnetic stirrers often provide a convenient and efficient bending without creating ambient air entrainment into the liquid. This is especially true of fluid mixing operations done in the laboratory. There are many other applications, however, in which the entrainment of a vapor phase with a liquid is specifically desired. Examples of these applications include mixing in two-phase reaction vessels and apparatus to measure vapor liquid equilibrium. These mixing operations are difficult to accommodate with magnetic stirrers because the vast majority of such stirrers are designed not to entrain vapor. In this disclosure, we teach a novel design of a mixing rotor that efficiently mixes the liquid phase and also achieves entrainment of vapor into the liquid.

[NIST Docket Number: 00–031US]

Title: Polyelectrolyte Derivatization of Microfluidic Devices.

Abstract: The invention describes the use of polyelectrolyte multilayers (PEMs) to alter the surface of microchannel surfaces was obtained by coating the channels with alternating layers of poly (allyamine hydrochloride) and poly (styrene sulfonate). The PEMs are easily fabricated and provide a means for controlling the flow direction and the electrosmotic mobility in the microchannels.

[NIST Docket Number: 01–008US]

Title: Chemical Modification of Substrates by Photo-ablation Under Different Local Atmospheres and Chemical Environments for the Fabrication of Microstructures.

Abstract: The invention consists of a one step photo-ablation process that can simultaneously use different gas or liquid atmospheres to pattern microchannels and functionalize the surface of polymer substrates.

Dated: December 4, 2001.

Karen H. Brown,

Deputy Director.

[FR Doc. 01–30629 Filed 12–11–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the 87th Interim Meeting of the National Conference on Weights and Measures will be held January 27 through January 30, 2002, at the Hyatt Regency Bethesda, Bethesda, MD. The meeting is open to the public. The National Conference on Weights and measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States and private sector representatives. The Interim Meeting of the Conference as well as the Annual Meeting to be held next July (a notice will be published in the **Federal Register** prior to such meeting), brings together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects that relate to the field of weights and measures technology and administration. Pursuant to (15 U.S.C. 272B), the National Institute of Standards and Technology supports the National Conference on Weights and Measures in order to promote uniformity among the States in the complex laws, regulations, test methods, and testing equipment that comprise regulatory control by the States of commercial transactions involving weighing and measurement.

DATES: The meeting will be held January 27–January 30, 2002.

LOCATION OF MEETING: Hyatt Regency Bethesda, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Henry V. Oppermann, Director of NIST Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. Telephone (301) 975–4004, or E–mail *owm@nist.gov.*

Dated: December 4, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–30628 Filed 12–11–01; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Withdrawal of Short Supply Petition under the North American Free Trade Agreement (NAFTA)

December 6, 2001.

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

ACTION: Withdrawal of petition concerning a modification of the NAFTA rules of origin for gimped yarn made from certain filament yarn of nylon.

SUMMARY: On September 5, 2001 the Chairman of CITA received a petition from Unifi, Inc. (Unifi) alleging that

certain untextured (flat) yarns of nylon classified under subheading 5402.41.90 of the Harmonized Tariff Schedule of the United States (HTSUS) cannot be supplied by the domestic industry in commercial quantities in a timely manner and requested that the President proclaim a modification of the NAFTA rules of origin. (see 66 FR 51024, published on October 5, 2001). Unifi requested that the NAFTA rules of origin for gimped yarns classified under subheading 5606.00 of the HTSUS be modified to allow the use of non-North American yarns. CITA solicited public comments regarding the request.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q); Executive Order 11651 of March 3, 1972, as amended.

On December 4, the Chairman of CITA received a letter from Unifi requesting that its petition be withdrawn because a U.S. company affirmed its intention to restart production of these yarns domestically. As a result of this request, CITA will not consider this short supply petition and is withdrawing its request for public comments on the petition.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–30665 Filed 12–11–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0136]

Federal Acquisition Regulation; Submission for OMB Review; Commercial Item Acquisitions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0136).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the clauses and provisions required for use in commercial item acquisitions. A request for public comments was published at 66 FR 48664, September 21, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Acquisition Policy Division, GSA (202) 501–4764.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.

To implement these changes, DoD, NASA, and GSA amended the Federal Acquisition Regulation (FAR) to include several streamlined and simplified clauses and provisions to be used in place of existing clauses and provisions. They were designed to simplify solicitations and contracts for commercial items.

Information is used by Federal agencies to facilitate the acquisition of commercial items and services.

B. Annual Reporting Burden

Respondents: 118,000.
Responses Per Respondent: 12.1.
Total Responses: 1,427,800.
Hours Per Response: .312.
Total Burden Hours: 445,450.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0136 regarding Commercial Item Acquisitions in all correspondence.

Dated: December 6, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–30647 Filed 12–11–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Request for Public Review and Comment of Changes to the Navstar Global Positioning System (GPS) Space Segment/Navigation User Segment Interface Control Document (ICD) for the L2 Civil (L2 C) Signal

AGENCY: Department of the Air Force, DoD.

ACTION: Request for review and comment of changes to ICD–GPS–200C.

SUMMARY: This notice informs the public that the Global Positioning System (GPS)Joint Program Office (JPO) proposes to revise ICD–GPS–200, Navstar GPS SpaceSegment/Navigation User Interfaces, to include the description of the proposed L2 C signal, to be transmitted at the L2 frequency (1227.6 MHz). These proposed changes are described in a Proposed Interface Revision Notice (PIRN): PIRN–200C–007. The PIRN can be reviewed at the following Web site: *http://gps.losangeles.af.mil.* Select ''Configuration Management'' and then ''Public Data for Review.'' Hyperlinks are provided to ''PIRN–200C–007 (PDF)'' and to review instructions. Reviewers should save the PIRN to a local memory location prior to opening and performing the review. All comments and their resolutions will be posted to the Web site.

ADDRESSES: Submit comments to Mr. Soon K. Yi via E-mail at syi@arinc.com, by fax at 310–322–4474, or by mail to ARINC Inc., Attn: Soon K. Yi, 2250 E.

ImperialHighway, Suite 450, El Segundo, CA 90245–3509. A comment matrix is provided at the Web site and is the preferred method of comment submittal.

DATES: The suspense date for comment submittal is January 2, 2002.

FOR FURTHER INFORMATION CONTACT: 1st Lt Reginald Victoria, ICD–GPS–200 Point of Contact, 310–363–6329, GPS JPO System Engineering Division.

SUPPLEMENTARY INFORMATION: The civilian and military communities use the Global Positioning System, which employs a constellation of 24 satellites to provide continuously transmitted signals to enable appropriately configured GPS user equipment to produce accurate position, navigation, and time information.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–30635 Filed 12–11–01; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meetings of the Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System (NCCS). The purpose of these meetings is to conduct a comprehensive and independent review of the NCCS positive measures to assure authorized use of nuclear weapons when directed by the President while assuring against unauthorized or inadvertent use. This meeting will be closed to the public.

DATES: December 18—19, 2001.

ADDRESSES: Room 3C912, Pentagon, Washington DC.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, U.S. NuclearCommand and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike,Suite 500, Falls Church, Virginia 22041, (703) 681–8681.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–30634 Filed 12–11–01; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant Hetero Technology Integration Solutions, Incorporated (HTiS), a corporation of New Hampshire, having a place of business at Newburyport, Massachusetts, an exclusive license in any right, title and interest the Air Force has in:

a. U.S. Patent No. 5,472,914 issued December 5, 1995, entitled ''Wafer Joined Optoelectronic Integrated Circuits and Method,'' Serial No. 274,882 and filed July 14, 1994, by Eric A. Martin, Kenneth Vaccaro, Joseph P. Lorenzo, and Andrew Davis;

b. U.S. Patent No. 5,557,120 issued September 17, 1996, entitled ''Wafer Joined Optoelectronic Integrated Circuits,'' Serial No. 443,915 and filed May 17, 1995, by Eric A. Martin, Kenneth Vaccaro, Joseph P. Lorenzo, and Andrew Davis;

c. U.S. Patent No. 5,639,673 issued June 17, 1997, entitled ''Transparent Ohmic Contacts for Schottky Diode Optical Detectors on Thin and Inverted Epitaxial Layers,'' Serial No. 486,442 and filed June 8, 1995, by Kenneth Vaccaro, Eric A. Martin, Stephen Spaziani, and Andrew Davis; and

d. U.S. Patent No. 5,689,125 issued November 18, 1997, entitled ''Cadmium Sulfide Interface Layers for Improving III–V Semiconductor Device Performance and Characteristics,'' Serial No. 489,601 and filed June 12, 1995, by Kenneth Vaccaro, Andrew Davis, Helen M. Dauplaise, and Joseph P. Lorenzo.

A license for this patent will be granted unless a written objection is received within 15 days from the date of publication of this Notice. Information concerning this Notice may be obtained from Mr. William H. Anderson, Associate General Counsel(Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304, Arlington, VA 22209–2310. Mr. Anderson can be reached at (telephone) 703–588–5090/5091 or by fax at 703–588-8037.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–30633 Filed 12–11–01; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Energy (DOE), pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection package with the Office of Management and Budget (OMB).

The package covers collections of information concerning the public and the management and administration of DOE's Government-owned/contractor-operated facilities (GOCOs), off-site contractors, and the public. The information is used by Departmental management to exercise management oversight with respect to the implementation of applicable statutory and contractual requirements and obligations. The collection of this information is critical to ensure that the Government has sufficient information to judge the degree to which contractors meet contractual requirements; that public funds are being spent in the manner intended; and that fraud, waste, and abuse are immediately detected and eliminated.

DATES: Written comments and recommendations for the proposed collections of information must be submitted to the OMB Desk Officer, within January 11, 2002. 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. In addition, please notify the DOE contact listed in this Notice.

ADDRESSES: Address comments to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW, Washington, DC 20503. (Comments should also be addressed to Susan L. Frey, Director, Records Management Division, Office of the Deputy Associate CIO for Cyber Security [IM–11], Office of the Chief Information Officer, U.S. Department of Energy, Germantown, MD 20874–1290.)

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Department's Paperwork Reduction Act Submission should be directed to Michael B. Raizen, Office of Procurement and Assistance

Policy (ME–61), U.S. Department of Energy, Washington, DC 20585, (202) 586–8189. Any other information should be directed to Ms. Susan L. Frey, (see above address), by telephone at (301) 903–3666 or e-mail at *Susan.Frey@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This package contains: (1) Current OMB No. 1910–4100; (2) Package Title: Procurement; (3)Summary: Request for a three-year extension, which covers mandatory responses; (4) Purpose: This information is required by DOE to ensure that programmatic and administrative management requirements and resources are managed efficiently and effectively and to exercise management oversight over DOE M&O contractors of the Department's GOCO facilities, and off-site contractors. (5) Type of Respondents: DOE management and operating contractors; off-site contractors, and the public; (6) Estimated Number of Responses: 3,811; Estimated number of Burden Hours: 1,086,529. This estimate is the sum of the burden reported by Departmental Elements and the Field Organizations as compiled from their respective contractors or estimated by expert personnel familiar with these collections. Computations are based on the number of respondents times the annual reporting frequency times the hours per each response.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC on December 5, 2001.

Loretta D. Bryant,

Acting Director, Records Management Division, Office of Deputy Associate CIO for Cyber Security, Office of the Chief Information Officer.

[FR Doc. 01–30748 Filed 12–11–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Tuesday, January 15, 2002, 8:00 a.m.–6:00 p.m.; Wednesday, January 16, 2002, 8:00 a.m.–5:00 p.m.

Public participation sessions will be held on: Tuesday, January 15, 2002, 12:15–12:30 p.m, 5:45–6:00 p.m.; Wednesday, January 16, 2002, 11:45–12:00 noon, 4:00–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Ameritel Inn, 645 Lindsay Boulevard, Idaho Falls, Idaho.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanuppriorities at the INEEL.

Tentative Agenda: Topics

- The recently released report titled ''Poison in the Vadose Zone''
- Biannual rotation of CAB membership
- Remediation objectives for the Subsurface Disposal Area
- Pit 9 Interim Action
- Public acceptance of alternative technologies to incineration
- Environmental Restoration program and how DOE is doing in implementing its commitments under the Federal Facility Agreement/Consent Order
- Closure of High-Level Waste tanks 182 and 183
- INEEL Long-Term Stewardship Strategic Overview
- CAB's position on the INEEL Comprehensive Environmental Response, Compensation, and Liability Act Disposal Facility
- Proposed Plan for remedial action at Waste Group 10
- Workforce restructuring

(Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *www.ida.net/users/cab/.)*

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Requests must be received five days prior to the meeting andreasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Wendy Lowe,INEEL CAB Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402 or by calling (208) 522–1662.

Issued at Washington, DC, on December 7, 2001.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–30745 Filed 12–11–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, January 17, 2002, 5:30 p.m.—9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations

to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m. Informal Discussion

6 p.m. Call to Order; Approve Minutes

6:10 p.m. DDFO's Comments; Board Response; Public Comments

7 p.m. Presentations

8:30 p.m. Task Force and Subcommittee Reports; Board Response; Public Comments

9 p.m. Administrative Issues

9:30 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC on December 7, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–30746 Filed 12–11–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **FederalRegister**.

DATES: Wednesday, January 9, 2002, 6 p.m.—9:30 p.m.

ADDRESSES: Garden Plaza Hotel, 215 South Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–922, Oak Ridge, TN 37831.Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. FY 2002 Budget and Prioritization, DOE/ORO Representative.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on December 7, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–30747 Filed 12–11–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–110–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2001, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective December 1, 2001:

Fiftieth Revised Sheet No. 8
Fiftieth Revised Sheet No. 9
Forty-ninth Revised Sheet No. 13
Sixtieth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.4 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR advises that the proposed changes would increase current quarterly Above-Market Dakota Cost recoveries from $1,968,858 to $2,447,977.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30693 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–87–000]

ANR Pipeline Company; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Thirty-Second Revised Sheet No. 17. ANR requests effective date of January 1, 2002.

ANR states that the filing is being made in compliance with the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, *et al.*, and approved by the Commission on April 29, 1998 (the GRI Settlement), *Gas Research Institute*, 83 FERC ¶ 61,093 (1998), *order on reh'g*, 83 FERC ¶ 61,331 (1998), and the Commission's Letter Order approving the Gas Research Institute's Year 2002 Research, Development and Demonstration Program and 2001–2005 Five-Year Plan issued on September 19, 2001 in Docket No. RP01–434. ANR further states that the revised tariff sheets revise the Gas Research Institute surcharges for 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30720 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–47–001]

Aquila Long Term, Inc.; Notice of Filing

December 6, 2001.

Take notice that on December 4, 2001, Aquila Long Term, Inc. (Aquila Long Term), an indirect wholly owned subsidiary of Aquila, Inc., tendered for filing a rate schedule to engage in sales at market-based rates. Aquila Long term included in its filing a proposed code of conduct.

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 December 13, 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 Commission's Web site 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30707 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–104–000]

CMS Trunkline Gas Company, LLC; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective January 1, 2002:

First Revised Sheet No. 10
First Revised Sheet No. 11
First Revised Sheet No. 12
First Revised Sheet No. 13
First Revised Sheet No. 14
First Revised Sheet No. 15
First Revised Sheet No. 16
First Revised Sheet No. 17

Trunkline states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2002 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding (Settlement Agreement) approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61, 331 (1998) and the Commission's Letter Order dated September 19, 2001 in Docket No. RP01–434–000. Specifically, Trunkline's filing complies with the surcharges set forth in Appendix A to the Settlement Agreement, as adjusted upward by ten percent consistent with the stated intention of Settlement Agreement Article II, Section 1.0 and the Commission's September 19, 2001 Letter Order, as follows: (1) A reservation surcharge of 6.6¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, i.e., greater than 50% load factor; (2) a reservation surcharge of 4.07¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, i.e., less than or equal to 50% load factor; (3) a GRI volumetric surcharge of 0.55¢ per dekatherm surcharge will be charged on all non-discounted firm commodity and interruptible transportation services; and (4) a 0.88¢ per dekatherm surcharge

will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Trunkline's Rate Schedule SST.

Trunkline states that copies of this filing are being served on all affected customers and applicable 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30687 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–445–002]

CMS Trunkline LNG Company, LLC; Notice of Compliance Filing

December 6, 2001.

Take notice that on November 30, 2001, CMS Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following revised tariff sheets to be effective January 1, 2002.

First Revised Sheet No. 2
First Revised Sheet No. 5
First Revised Sheet No. 52
Original Sheet No. 126
Original Sheet No. 127
Sheet Nos. 128–149

TLNG states that the purpose of this filing is to implement the terms of the August 1, 2001 Stipulation and Agreement in Docket Nos. RP01–445–000 and CP97–26–000 [Not Consolidated] (Settlement) which was approved by the Commission's Order Approving Settlement dated October 11, 2001. Specifically, the revised tariff sheets included herein reflect Settlement rates and the Settlement provision established in new Section 22 of the General Terms and Conditions.

TLNG states that a copy of this filing is available for public inspection during regular business hours at TLNG's office at 5444 Westheimer Road, Houston, Texas 77056–5306. In addition, copies of this filing have been mailed to all affected customers, interested state commissions and parties to this proceeding.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30713 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–016]

Colorado Interstate Gas Company; Notice of Compliance Filing

December 6, 2001.

Take notice that on November 30, 2001, Colorado Interstate Gas Company (CIG) tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective December 1, 2001:

Original Sheet Nos. 11E—11M

CIG states that the above tariff sheets are being filed to implement negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30673 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–101–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, Thirty-Fifth Revised Sheet No. 11, with an effective date of January 1, 2002.

CIG states that the filing is being made in compliance with the Commission's

order issued September 19, 2001 at Docket No. RP01–434–000.

CIG states the tariff sheet is being filed to revise the Stranded Account No. 858 surcharges.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30684 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–102–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Volume No. 1, to be effective January 1, 2002.

CIG states that the tariff sheet is being filed to revise the Fuel Reimbursement Percentage applicable to Lost, Unaccounted-For and Other Fuel Gas.

CIG states that copies of the filing have been served upon all shippers on CIG's system, and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30685 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Colorado Interstate Gas Company; [Docket No. RP02–91–000] Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, Colorado Interstate Gas Company (CIG), tendered for filing its final true-up of the Gas Quality Control (GQC) surcharge.

CIG states that the purpose of the filing is to comply with its FERC Gas Tariff, First Revised Volume No. 1, Article 20.1 of the General Terms and Conditions, and the Order of the Federal Energy Regulatory Commission in Docket No. RP01–570–000. CIG states that this filing reflects the final true-up of the GQC surcharge which tracked the costs associated with the incremental facilities and, if any, the cost of low-Btu gas as the result of the Offer of Settlement as accepted by the Commission and approved in Docket No. RP98–113.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30723 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–108–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2001, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 2002:

Fifty-third Revised Sheet No. 25
Fifty-third Revised Sheet No. 26
Fifty-third Revised Sheet No. 27
Forty-seventh Revised Sheet No. 28

Columbia states that this filing is being submitted in accordance with the Federal Energy Regulatory Commission's (Commission) order issued on September 19, 2001 in Gas Research Institute's (GRI) Docket No. RP01–434–000 (Order Approving Settlement), and in accordance with Section 33 of the General Terms and Conditions of its FERC Gas Tariff, Columbia is submitting revised tariff sheets to reflect the 2002 GRI funding mechanism.

Columbia states that copies of its filing have been served upon the parties listed on the official service list.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30691 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–036]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

December 6, 2001.

Take notice that on December 3, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to the Federal Energy Regulatory Commission (Commission) the following contract for disclosure of a recently negotiated rate transaction:

FTS–1 Service Agreement No. 71725 between Columbia Gulf Transmission Company and Entergy Mississippi, Inc., dated November 29, 2001

Columbia Gulf requests that the Commission accept the FTS–1 service agreement to be effective January 1, 2002.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding, and that copies of the filing are being made available for public inspection during regular business hours in Columbia Gulf's offices in Houston, Texas and Washington, DC.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30676 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–14–001]

Crossroads Pipeline Company; Notice of Compliance Filing

December 6, 2001.

Take notice that on November 30, 2001, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 (Tariff), the revised tariff sheets listed on Appendix A, with a proposed effective date of November 1, 2001. These tariff sheets are being filed in compliance with the Commission's October 31, 2001 Letter Order in the above-referenced docket.

Crossroads states that a copy of this filing is available for public inspection during regular business hour at Crossroads's office at 12801 Fair Lakes Parkway, Fairfax, Virginia, and 10 G Street, NE., Suite 580, Washington, DC 20002. In addition, copies of this filing have been mailed to all affected customers, interested state commissions and parties to this proceeding.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30714 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–93–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2001, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A attached to the filing, to become effective January 1, 2002.

Destin states that purpose of this filing, pursuant to the provisions of Section 154 of the Commission Regulations, is to reflect tariff changes necessitated by the change in management and administrative responsibilities of the Destin facilities. These modifications reflect changes to dispatching and emergency addresses and telephone numbers in the form of service agreements.

Destin states that copies of this filing are being served on all affected shippers and applicable 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30725 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–94–000]

Egan Hub Partners, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2001, Egan Hub Partners, L.P. (Egan Hub) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets proposed to be effective on December 1, 2001:

Second Revised Sheet No. 4
Third Revised Sheet No. 90
Third Revised Sheet No. 91
First Revised Sheet No. 99A
First Revised Sheet No. 103A
Fourth Revised Sheet No. 112

Egan Hub states that the purpose of this filing is to modify certain provisions of its tariff to reflect the connection of its storage facility located in Acadia Parish, Louisiana, with the interstate pipeline systems of Texas Eastern Transmission, LP and Florida Gas Transmission Company, as described in the Request for Authorization of Blanket Activity filed on June 18, 2001, in Docket No. CP01–390–000.

Egan Hub states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30726 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–81–000]

El Paso Natural Gas Company; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 29, 2001, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to become effective January 1, 2002:

Second Revised Volume No. 1–A

Twenty-Second Revised Sheet No. 20
Fifteenth Revised Sheet No. 22
Twenty-First Revised Sheet No. 23
Twenty-Sixth Revised Sheet No. 24
Twenty-First Revised Sheet No. 26
Twenty-First Revised Sheet No. 27
Eighth Revised Sheet No. 37
Eighth Revised Sheet No. 38

Third Revised Volume No. 2

Fiftieth Revised Sheet No. 1–D.2
Forty-Fourth Revised Sheet No. 1–D.3

El Paso states that the above tariff sheets are being filed to adjust its rates for inflation in accordance with its tariff and in accordance with the settlement of its last general rate case.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30717 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–90–000]

El Paso Natural Gas Company; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with an effective date of January 1, 2002:

Second Revised Volume No. 1–A

Twenty-Third Revised Sheet No. 20
Sixteenth Revised Sheet No. 22
Twenty-Second Revised Sheet No. 23
Twenty-Seventh Revised Sheet No. 24
Twenty-Second Revised Sheet No. 26
Twenty-Second Revised Sheet No. 27

Seventeenth Revised Sheet No. 28
Ninth Revised Sheet No. 37
Ninth Revised Sheet No. 38
Eighth Revised Sheet No. 256
Eighth Revised Sheet No. 257

Third Revised Volume No. 2

Fifty-First Revised Sheet No. 1–D.2
Forty-Fifth Revised Sheet No. 1–D.3

El Paso states that the filing is being made in compliance with the Commission's order issued September 19, 2001 at Docket No. RP01–434–000. El Paso states the tariff sheets are being filed to revise the Gas Research Institute surcharges and to update the identification of low and high load factor shippers.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30722 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–195–004]

Equitrans, L.P.; Notice of Compliance Filing

December 6, 2001.

Take notice that on November 30, 2001, Equitrans, L. P. (Equitrans) filed the following revised tariff sheets in order to comply with the Commission's November 30, 2000. Letter Order in Docket No. RP99–195–004 that approved an uncontested settlement relative to product extractions services on Equitrans' system. Such revised tariff sheets are proposed to be effective as of December 1, 2001.

Eighth Revised Sheet No. 6
Second Revised Sheet No. 22
Second Revised Sheet No. 23
Second Revised Sheet No. 28
Second Revised Sheet No. 31
First Revised Sheet No. 32
Second Revised Sheet No. 74
Second Revised Sheet No. 75
Second Revised Sheet No. 303

Equitrans states that under the approved, uncontested settlement it was authorized to collect both a $.0067 per Dth surcharge in order to recover certain agreed-upon product extraction underrecollections and an interim $.10 per Dth products extraction rate through November 30, 2001 while existing shippers were to make their own products extraction arrangements. Equitrans further states that, consistent with the approved settlement, the revised tariff sheets remove from its tariff both the surcharge and the interim products extraction rate now that it has recovered the agreed-upon underrecollections and that the interim period has expired for existing shippers to make their own products extraction arrangements. The revised tariff sheets are proposed in accordance with the settlement to be effective as of December 1, 2001.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30710 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–2688–002 and ER01–2689–002]

Gilroy Energy Center, LLC; Notice of Filing

December 6, 2001.

Take notice that on December 4, 2001, Gilroy Energy Center, LLC (the Applicant), submitted for filing with the Federal Energy Regulatory Commission (Commission) a second Substitute Sheet No. 3 to its FERC Electric Tariff No. 1, in compliance with the Commission Staff Letter issued in this Docket on November 30, 2001.

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 December 13, 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 Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docketı'' 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30705 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–109–000]

Granite State Gas Transmission; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2001, Granite State Gas Transmission (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 2002:

Twenty-fifth Revised Sheet No. 21
Twenty-sixth Revised Sheet No. 22
Seventeenth Revised Sheet No. 23

Granite State states that this filing is being submitted in accordance with the Commission's order issued on September 19, 2001 in Gas Research Institute's (GRI) Docket No. RP01–434–000 (Order Approving Settlement), and in accordance with Section 18 of the General Terms and Conditions of its FERC Gas Tariff, Granite State is submitting revised tariff sheets to reflect the 2002 GRI funding mechanism.

Granite State states that copies of its filing is being served on its firm and interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 01–30692 Filed 12–11–01; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–011]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreement

December 6, 2001.

Take notice that on November 30, 2001, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and Nexen Marketing U.S.A. Inc. (Nexen) (FT Service Agreement). The FT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and Nexen commencing December 1, 2001.

Great Lakes states that the FT Service Agreement is being filed to implement a negotiated rate contract as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000.

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.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 01–30711 Filed 12–11–01; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–115–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2000, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 4A 1, with an effective date of January 1, 2002.

Iroquois states that, pursuant to Part 154 of the Commission's regulations and Section 12.1 of the General Terms and Conditions of its tariff, it is filing Sixth Revised Sheet No. 4 to reflect the GRI surcharge for calendar year 2002, which the Commission approved in an order issued on September 19, 2001 in Docket No. RP01–434–000.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30698 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–113–000]

Kinder Morgan Interstate Gas Transmission LLC;Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, the following tariff sheet, to become effective January 1, 2002:

Fifth Revised Sheet No. 4D

Pursuant to the Commission's Order issued September 19, 2000 in Docket No. RP00–313–000, KMIGT submits the proposed tariff sheet reflecting the required changes to the Gas Research Institute (GRI) surcharges in its tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30696 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–92–000]

K N Wattenberg Transmission Limited Liability Company; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, K N Wattenberg Transmission Limited Liability Company (KN Wattenberg) tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, the following tariff sheet, to become effective December 1, 2001:

Second Revised Sheet No. 0

Pursuant to the Commission's Order issued November 23, 2001, in Docket No. CP01–443–000, KN Wattenberg submits the proposed tariff sheet reflecting cancellation of its FERC Gas Tariff. In the November 23 Order, the Commission found that KN Wattenberg provides primarily gathering service and is thus exempt from FERC's regulatory jurisdiction under section 1(b) of the Natural Gas Act. The Commission granted KN Wattenberg's requested abandonment of facilities and services and rescinded KN Wattenberg's existing certificates. Accordingly, KN Wattenberg abendoned such facilities and services effective 12:01 a.m. December 1, 2001. KN Wattenberg therefore requested waiver of 18 CFR 154.602 to permit the Notice of Termination to become effective on 12:01 a.m. December 1, 2001, as proposed.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30724 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3142–003]

Midwest Independent Transmission System Operator, Inc.; Notice of Filing

December 6, 2001.

Take notice that on November 30, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) substituted pages to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Original Volume No. 1, which reflect that Schedule 4 (Energy Imbalance Service and Inadvertent Interchange Service) has been suspended indefinitely until a further refined and enhanced Schedule 4 can be developed in concert with the Midwest ISO and its stakeholders. The Midwest ISO submits that the suspension of its Schedule 4 effective date will result in customers, which are currently Schedule 4 customers of the Midwest ISO Transmission Owners, continuing to take Schedule 4 service under the Midwest ISO Transmission Owners' OATTs. The Midwest ISO shall re-submit at a later date a revised Schedule 4 (Energy Imbalance Service and Inadvertent Interchange Service).

The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010, with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee

participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at www.midwestiso.org under the heading ''FERC Filings'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

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 December 17, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30706 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–72–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2001, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of Midwestern's FERC Gas Tariff, Third Revised Volume No. 1, replacing Second Revised Volume No. 1, Midwestern requests an effective date of January 1, 2002.

Midwestern proposes to make numerous housekeeping changes throughout its tariff to reflect the new ownership and operation of Midwestern Gas Transmission Company. Midwestern is also requesting waivers of Subsections 6.2 and 25.2(a) of the General Terms and Conditions of its FERC Gas Tariff as set forth in the filing.

Midwestern states that copies of this filing have been sent to all of Midwestern's contracted shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30715 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–73–000]

Mississippi River Transmission Corporation; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 29, 2001, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its Gas Tariff, Third Revised Volume No. 1, to become effective January 1, 2002 the following sheets:

Forty-Fourth Revised Sheet No. 5
Forty-Fourth Revised Sheet No. 6
Forty-First Revised Sheet No. 7

MRT states that the purpose of this filing is to implement the Gas Research Institute (GRI) Surcharge in accordance with Section 20 of the General Terms and Conditions of MRT's Tariff. The GRI surcharges were approved by the Commission's Letter Order issued September 19, 2001, in Docket No. RP01–434–000, to be effective January 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30716 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–98–000]

Mojave Pipeline Company; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sixth Revised Sheet No. 11, with an effective date of January 1, 2002.

Mojave states that the tariff sheets are being filed to revise the Gas Research Institute surcharges.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30683 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–97–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Forty Fifth Revised Sheet No. 9 and Fifth Revised Sheet No. 43, with a proposed effective date of January 1, 2002.

National states that pursuant to Article III, Section 1, of the approved settlement at Docket Nos. RP94–367–000, et al., National is required to recalculate the maximum Firm Gathering (FG) rate annually to reflect: (a) The changes in the FG reservation determinants based on the FG throughput for the prior 12 months ended October 31; (b) an annual reduction of 2.5 percent in direct Operation and Maintenance Costs; (c) the costs resulting from operation of Sections 2 and 3 of Article III of the settlement; and (d) changes in the IG revenues to be subtracted from the Gathering Cost-of-Service based on the maximum IG rate in effect each month during the prior 12 months ended October 31 times the IG throughput for the same period. The recalculation produced a negative FG rate. Since the minimum FG reservation rate stated in National's tariff is $0.0000, the maximum FG reservation rate will reflect a rate of $0.0000.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30682 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–105–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective December 1, 2001:

Forty Third Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of $0.12 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30688 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–106–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2001, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Nineteenth Revised Sheet No. 8, with a proposed effective date of January 1, 2002.

National states that the proposed tariff sheet reflects an adjustment to recover through National's EFT rate the costs associated with the Transportation and Storage Cost Adjustment (TSCA)

provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of this compliance filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30689 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–107–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2001, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to become effective January 1, 2002:

Eighteenth Revised Sheet No. 8
Forty Fourth Revised Sheet No. 9
Eighth Revised Sheet No. 10
Sixth Revised Sheet No. 11

National asserts that the purpose of this filing is to reflect the year 2002 Gas Research Institute (GRI) unit surcharges approved by the Commission on September 19, 2001, at Docket No. RP01–434–000. The proposed tariff sheets reflect demand/reservation surcharges of 06.6 cents and 04.07 cents per Dth for ''high load factor and low load factor'' customers respectively, and a commodity/usage surcharge of .55 cents.

In addition, National is making conforming changes related to it's Order 637 proceeding at Docket No. RP00–399. In part, National's August 31, 2001 filing revised the transportation rate schedules to refer to the rate for ''Overrun Transportation'' instead of ''Authorized Overrun Transportation'', effective January 1, 2002. This change was accepted by Commission order dated October 26, 2001. Conforming changes to National's rate sheets are reflected on the attached tariff sheets.

National further states that copies of this filing were served upon National's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30690 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–045]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate Filing

December 6, 2001.

Take notice that on November 30, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing with the Federal Energy Regulatory Commission (Commission), certain tariff sheets to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1 (Tariff). An effective date of December 1, 2001, is requested for these tariff sheets.

Sixth Revised Volume No. 1
Original Sheet No. 26B.01
Fourth Revised Sheet No. 414
Second Revised Sheet No. 26B

Natural states that the purpose of this filing is to implement a negotiated rate transactions under Natural's Rate Schedules ITS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural requests waivers of the Commission's Regulations to the extent necessary to permit the proposed tariff sheets to become effective December 1, 2001.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30708 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–046]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate Filing

December 6, 2001.

Take notice that on November 30, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing with the Federal Energy Regulatory Commission (Commission), certain tariff sheets to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1 (Tariff). An effective date of December 1, 2001, is requested for these tariff sheets.

Original Sheet No. 26U.01
Original Sheet No. 26U.02

Natural also submits for filing and acceptance copies of the Firm Transportation Negotiated Rate Agreement dated August 28, 2001 (Agreement).

Natural states that the purpose of this filing is to implement two (2) negotiated rate transactions entered into by Natural and MidAmerican Energy Company (MidAmerican) under Natural's Rate Schedules FTS and DSS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff, and to update the listing of non-conforming agreements in Natural's Tariff by eliminating the old, expiring MidAmerican Firm Transportation Negotiated Rate Agreement dated August 3, 2000. Natural states that the two (2) negotiated rate agreements do not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural requests waivers of the Commission's Regulations to the extent necessary to permit the proposed tariff sheets to become effective December 1, 2001.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30709 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–29–000]

Nevada Power Company Complainant, v. Morgan Stanley Capital Group, Inc. Respondent; Notice of Complaint

December 6, 2001.

Take notice that on December 4, 2001, Nevada Power Company (NPC) filed a complaint with the Federal Energy Regulatory Commission (Commission) requesting that the Commission mitigate unjust and unreasonable prices in sales contracts between NPC and Morgan Stanley Capital Group, Inc. (Morgan Stanley) entered into in the first half of 2001 for delivery after January 1, 2002.

NPC requests that the Commission set a refund effective date of 60 days from the date of filing of its complaint.

Copies of NPC's filing were served on Morgan Stanley and the Public Utilities Commission of Nevada. NPC has requested privileged treatment of certain information in the complaint and has filed privileged and public copies of the complaint, a request for privileged treatment, and a protective agreement.

Any person desiring to be heard or to protest this 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 must be filed on or before December 24, 2001. 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. Answers to the complaint shall also be due on or before December 24, 2001. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30701 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–31–000]

Nevada Power Company, Complainant, v. Mirant Americas Energy Marketing, L.P., Respondent; Notice of Complaint

December 6, 2001.

Take notice that on December 5, 2001, Nevada Power Company (NPC) filed a complaint requesting that the Federal Energy Regulatory Commission (Commission mitigate unjust and unreasonable prices in sales contracts between NPC and Mirant Americas Energy Marketing, L.P. (Mirant) entered into in the last half of 2000 and the first half of 2001 for delivery after January 1, 2002.

NPC requests that the Commission set a refund effective date of 60 days from the date of filing of its complaint.

Copies of NPC's filing were served on Mirant and the Public Utilities Commission of Nevada. NPC has requested privileged treatment of certain

information in the complaint and has filed privileged and public copies of the complaint, a request for privileged treatment, and a protective agreement.

Any person desiring to be heard or to protest this 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 must be filed on or before December 26, 2001. 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. Answers to the complaint shall also be due on or before December 26, 2001. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30703 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–32–000]

Nevada Power Company Complainant, v. Reliant Energy Services, Inc., Respondent.; Notice of Complaint

December 6, 2001.

Take notice that on December 5, 2001, Nevada Power Company (NPC) filed a complaint requesting that the Federal Energy Regulatory Commission (Commission) mitigate unjust and unreasonable prices in sales contracts between NPC and Reliant Energy Services, Inc. (Reliant) entered into in the first half of 2001 for delivery after January 1, 2002. NPC requests that the Commission set a refund effective date of 60 days from the date of filing of their complaint.

Copies of NPC's filing were served on Reliant and the Public Utilities Commission of Nevada. NPC has requested privileged treatment of certain information in the complaint, and has filed privileged and public copies of the complaint, a request for privileged treatment, and a protective agreement.

Any person desiring to be heard or to protest this 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 must be filed on or before December 26, 2001. 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. Answers to the complaint shall also be due on or before December 26, 2001. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30704 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–30–000]

Nevada Power Company and Sierra Pacific Power Company, Complainants, v. Calpine Energy Services, L.P., Respondent; Notice of Complaint

December 6, 2001.

Take notice that on December 4, 2001, Nevada Power Company (NPC'') and Sierra Pacific Power Company (SPPC) (collectively, the Nevada companies) filed a complaint with the Federal Energy Regulatory Commission (Commission), requesting that the Commission mitigate unjust and unreasonable prices in sales contracts between NPC and Calpine Energy Services L.P., (Calpine) and between SPPC and Calpine entered into in the first half of 2001 for delivery after January 1, 2002.

The Nevada companies request that the Commission set a refund effective date of 60 days from the date of filing of their complaint. Copies of the Nevada companies' filing were served on Calpine and the Public Utilities Commission of Nevada. The Nevada companies have requested privileged treatment of certain information in the complaint and have filed privileged and public copies of the complaint, a request for privileged treatment, and a protective agreement.

Any person desiring to be heard or to protest this 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 must be filed on or before December 24, 2001. 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. Answers to the complaint shall also be due on or before December 24, 2001. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30702 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–103–000]

Panhandle Eastern Pipe Line Company; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following

tariff sheets, to be effective January 1, 2002:

Sixty-Fourth Revised Sheet No. 4
Sixty-Fourth Revised Sheet No. 5
Sixty-Fourth Revised Sheet No. 6
Sixty-Seventh Revised Sheet No. 7
Sixty-Seventh Revised Sheet No. 8
Forty-Third Revised Sheet No. 15
Eighth Revised Sheet No. 17

Panhandle states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2002 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding (Settlement Agreement) approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998) and the Commission's Letter Order dated September 19, 2001 in Docket No. RP01–434–000.

Specifically, Panhandle's filing complies with the surcharges set forth in Appendix A to the Settlement Agreement, as adjusted upward by ten percent consistent with the stated intention of Settlement Agreement Article II, Section 1.0 and the Commission's September 19, 2001 Letter Order, as follows: (1) A reservation surcharge of 6.6¢ per dekatherm per month will be charged on non-discounted firm high load factor customers, i.e., greater than 50% load factor; (2) a reservation surcharge of 4.07¢ per dekatherm per month will be charged on non-discounted firm low load factor customers, i.e., less than or equal to 50% load factor; (3) a GRI volumetric surcharge of 0.55¢ per dekatherm surcharge will be charged on all non-discounted firm commodity and interruptible transportation services; and (4) a 0.88¢ per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Panhandle's Rate Schedule SCT.

Panhandle states that copies of this filing are being served on all affected customers and applicable 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30686 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–96–000]

Questar Pipeline Company; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, Questar Pipeline Company tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-Third Revised Sheet No. 5 and Original Volume No. 3, Thirty-First Revised Sheet No. 8, to be effective January 1, 2002.

Questar states that the tendered tariff sheets show a revised Fuel Gas Reimbursement Percentage (FGRP) of 1.6%, replacing the currently effective 0.8% for tracking fuel-use and lost and unaccounted-for gas. The difference of 0.8% is to reflect the increase in fuel, lost and unaccounted-for gas from the current FGRP rate of 1.3% to 1.5% for the prospective 12 months ending December 31, 2001, as well as an increase from −0.5% to 0.1% amortization for fuel under recovered in the 12 month period ended September 30, 2001.

Questar states that the revised FGRP is filed pursuant to Section 12.14 of the General Terms and Conditions of Part 1 of Questar's tariff, First Revised Volume No. 1.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30681 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–077]

Reliant Energy Gas Transmission Company; Notice of Negotiated Rate

December 6, 2001.

Take notice that on November 30, 2001, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective December 1, 2001:

First Revised Sheet No. 634
First Revised Sheet No. 635

REGT states that the purpose of this filing is to reflect the revision of an existing negotiated rate contract and the expiration of an existing negotiated rate contract.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30674 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–312–064]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

December 6, 2001.

Take notice that on November 30, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval a Gas Transportation Agreement between Tennessee and Aquila Energy Marketing Corporation pursuant to Tennessee's Rate Schedule FT–A (FT–A Agreement) and a Firm Transportation Negotiated Rate Letter Agreement (Negotiated Rate Agreement). Tennessee requests that the Commission accept and approve the FT–A Agreement and Negotiated Rate Agreement to be effective January 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30675 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–114–000]

Tennessee Gas Pipeline Company; Notice Cashout Report

December 6, 2001.

Take notice that on November 30, 2001, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its cashout report for the September 2000 through August 2001 period.

Tennessee states that the cashout report is the third filed by Tennessee under the new cashout reconciliation methodology established pursuant to the March 25, 1999 Stipulation and Agreement on the Tennessee system. Tennessee further states that the cashout repot reflects a cashout gain during the period of $11,579,694. Pursuant to the March 25, 1999 cashout settlement, there is a cumulative loss carry forward from prior cashout operations of $978,801 resulting in a net gain of $10,600,893.

Tennessee states that copies of the filing has been mailed to all affected customers and state regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in on or before December 13, 2001. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30697 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–83–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, the revised sheets attached as Appendix A to the filing, with an effective date of January 1, 2002.

Tennessee states that the revised tariff sheets are being filed in compliance with the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, *et al.,* and approved by the Commission on April 29, 1998 (the ''GRI Settlement''), *Gas Research Institute,* 83 FERC ¶ 61,093 (1998), *order on reh'g,* 83 FERC ¶ 61,331 (1998), and the Commission's Letter Order approving the Gas Research Institute's Year 2002 Research, Development and Demonstration Program and 2001–2005 Five-Year Plan issued on September 19, 2001 in Docket No. RP01–434. Tennessee further states that the revised tariff sheets revise the Gas Research Institute surcharges for 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30718 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–85–000]

Tennessee Gas Pipeline Company; Notice of Filing and Request for Waiver

December 6, 2001.

Take notice that on November 30, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a revised accounting of Tennessee's take-or-pay transition costs and a request for waiver of the requirement that Tennessee restate its take-or-pay transition surcharges.

Tennessee states that this filing of the revised accounting is in compliance with Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee further states that the request for waiver is based on the fact that Tennessee has not incurred any significant recoverable take-or-pay costs since its last filing on June 1, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before December 13, 2001. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30719 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–112–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2001, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed in Appendix A attached to the filing, with an effective date of January 1, 2002.

Texas Gas states the revised tariff sheets are being filed pursuant to Section 22 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to reflect the 2002 General RD&D Funding Units authorized in the ''Letter Order,'' issued by the Commission on September 19, 2001, in Docket No. RP01–434–000.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30695 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–426–006]

Texas Gas Transmission Corporation; Notice of Negotiated Rate Filing

December 6, 2001.

Take notice that on December 3, 2001, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 1, 2001:

Eighth Revised Sheet No. 1
Original Sheet No. 30
Sheet No. 31

Texas Gas states that the purpose of this filing is to reflect the negotiated rate contract with Conoco, Inc.

Copies of the revised tariff sheets are being mailed to all parties on the service list, Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30712 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–039]

TransColorado Gas Transmission Company; Notice of Compliance Filing

December 6, 2001.

Take notice that on November 30, 2001, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000, TransColorado Gas Transmission Company (TransColorado) tendered for filing and acceptance Thirty-Ninth Revised Sheet No. 21, Twenty-Seventh Revised Sheet No. 22 and Twelfth Revised Sheet No. 22A to Original Volume No. 1 of its FERC Gas Tariff to be effective December 1, 2001.

The tendered tariff sheets propose to revise TransColorado's Tariff to reflect negotiated-rate contract revisions. TransColorado requested waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective December 1, 2001.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30678 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–89–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2001, Transcontinental Gas pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets, which tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective January 1, 2002.

Transco states that the purpose of the instant filing is to reflect the 2002 GRI surcharges approved by the Commission's Order issued on September 19, 2001, in Docket No. RP01–434–000. Also, in accordance with GRI's 1993 settlement, Transco has calculated the firm transportation service load factors on the actual volumes transported during the 12 month period October 2000 through September 2001.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30721 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–018]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2001, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective on December 1, 2001:

13 Revised Sheet No. 5B.05
Fifth Revised Sheet No. 5B.06
Third Revised Sheet No. 5B.08

Transwestern states that the above sheets are being filed to implement a specific Dynegy Marketing and Trading negotiated rate transaction in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30679 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–95–000]

Viking Gas Transmission Company; Notice of Tariff Filing

December 6, 2001.

Take notice that on November 30, 2001, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following tariff sheets to become effective January 1, 2002:

Twenty-Seventh Revised Sheet No. 6
Twentieth Revised Sheet No. 6A
Eleventh Revised Sheet No. 6B

Viking states that the purpose of this filing is to change Viking's Gas Research Institute Adjustment (GRI Adjustment) as permitted by Sections 154.204 and 154.401 of the Commission's Rules and Regulations, 18 CFR 154.204, 154.401and in accordance with the Commission's September 19, 2001 ''Letter Order Regarding the Application of Gas Research Institute for Advance Approval of Its 2002–2006 RD&D Plan and 2002 RD&D Program and Jurisdictional Rate Provisions To Fund the 2002 Program,'' issued in Docket No. RP01–434–000 (''September 19, 2001 Letter Order''). Viking's authority to make this filing is set forth in Article XVIII of the General Terms and Conditions of Viking's FERC Gas Tariff, First Revised Volume No. 1.

Accordingly, Viking's GRI Adjustment has been changed to reflect the Commission's September 19, 2001 Letter Order as follows: a demand/reservation surcharge of 6.6 cents per Dth per month for high load factor customers; a demand/reservation surcharge of 4.07 cents per Dth per month for low load factor customers; and a volumetric commodity/usage surcharge of .55 cents per Dth.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30680 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–111–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective January 1, 2002:

Fourth Revised Sheet No. 6B

Williams states that this filing is being made pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the twelve months ended September 30, 2001.

Williams states that copies of this filing have been served on all Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30694 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–28–007]

Wyoming Interstate Company, Ltd; Notice of Proposed Changes in FERC Gas Tariff

December 6, 2001.

Take notice that on November 30, 2001, Wyoming Interstate Company, Ltd (WIC) tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff to become effective December 1, 2001:

Second Revised Volume No. 2

First Revised Sheet Nos. 102–107
Second Revised Sheet Nos. 110 and 117

The tendered tariff sheets are being filed to implement negotiated rate transactions related to the Medicine Bow facilities.

WIC states that copy of this filing are being mailed to its customers, state commission and other interested parties.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30677 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–16–001, et al.]

Minnesota Power, et al.; Electric Rate and Corporate Regulation Filings

December 6, 2001.

Take notice that the following filings have been made with the Commission:

1. Minnesota Power, Rainy River Energy Corporation—Taconite Harbor, LTV Steel Mining Company

[Docket No. EC02–16–001]

Take notice that on November 29, 2001, Minnesota Power (MP) and Rainy River Energy Corporation—Taconite Harbor (RRTH) filed with the Federal Energy Regulatory Commission (Commission) an amendment (Amendment) to the November 1, 2001, joint application (Application) pursuant to section 203 of the Federal Power Act of MP, RRTH and LTV Steel Mining Company (LTVSMC), seeking authorization for LTV Steel Mining Company (LTVSMC) to sell and MP and RRTH to acquire certain jurisdictional facilities including a dual-circuit transmission line, substation and step-up transformers. The transaction also involves the acquisition by RRTH of three 75 MW generating facilities from LTVSMC.

The Amendment requests authorization for RRTH to transfer to MP the jurisdictional step-up transformers that RRTH has requested authorization to acquire from LTVSMC and any jurisdictional contracts RRTH may enter into for the sale of the output of the generating facilities RRTH acquired from LTVSMC.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Energy South Bay

[Docket No. ER02–239–001]

Take notice that on November 29, 2001, Duke Energy South Bay LLC (Duke South Bay) tendered for filing revisions to its Reliability Must-Run Service Agreement (RMR Agreement) with the California Independent System Operator Corporation (CAISO), which, respectively, reflect changes to Schedule B, Table B–2 (capital surcharge) for 2001 and 2002. Duke South Bay submitted these revisions pursuant to section 7.4 of the RMR Agreement to recover costs from the CAISO related to Duke South Bay's installation of CAISO-approved Capital Items (Selective Catalytic Reduction (SCR) equipment) on Units #2 and #3 of the Duke South Bay facility. Duke South Bay requests an effective date of November 29, 2001, for the 2001 rate revisions, and an effective date of January 1, 2002, for the 2002 rate revisions.

Duke South Bay also requests to substitute certain revisions in this filing for corresponding revisions it had submitted in ER02–239–000.

Copies of Duke South Bay's filing have been served upon the CAISO, the California Electricity Oversight Board, the California Public Utilities Commission, and all Parties on the Commission's service list in Docket No. ER02–239–000.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER02–427–000]

Take notice that on November 30, 2001, PJM Interconnection, L.L.C. submitted notice of termination of the network integration transmission services agreement for American Cooperative Services, Inc. (American), which terminated by its own terms on November 30, 2001.

Copies of this filing were served upon all members of PJM and the state commissions within the PJM control area.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER02–428–000]

Take notice that on November 30, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), filed with the Federal Energy Regulatory Commission (Commission) two (2) service agreements with Oglethorpe Power Corporation for conditional firm point-to-point transmission service under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5). The provision of firm service under those agreements is conditioned upon the availability of sufficient capacity during two scheduled outages on certain transmission lines.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. UGI Development Company

[Docket No. ER02–429–000]

Take notice that on November 30, 2001, UGI Development Company (UGID) tendered for filing revisions to Service Agreement No. 2 for wholesale power sales transactions under UGID's Wholesale Power Sales Tariff, FERC Electric Tariff First Revised Volume No. 1, by and between UGID and UGI Utilities, Inc. UGID requests an effective date of December 1, 2001 for the proposed changes to the Service Agreement.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Services, Inc.

[Docket No. ER02–430–000]

Take notice that on November 30, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), filed with the Federal Energy Regulatory Commission (Commission) the Interconnection Agreement (Agreement) between Blount County Energy, LLC and APC. The Agreement allows Blount County to interconnect its facility in Blount County, Alabama to and operate in parallel with APC's electric system. The Agreement was executed on October 31, 2001. An effective date of October 31, 2001 has been requested.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER02–431–000]

Take notice that on November 30, 2001 Commonwealth Edison Company (ComEd) submitted for filing an amended Form of Service Agreement for Firm Point-To-Point Transmission Service (Amended Service Agreement) between ComEd and Alliant Energy (Alliant Energy) under the terms of ComEd's Open Access Transmission Tariff (OATT). Copies of this filing were served on Alliant.

ComEd requests an effective date of November 1, 2001, and accordingly seeks waiver of the Commission's notice requirements.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Progress Energy, Inc. on Behalf of Florida Power Corporation

[Docket No. ER02–432–000]

Take notice that on November 30, 2001, Florida Power Corporation (FPC) filed a Service Agreement with Carolina Power & Light Company under FPC's Short-Form Market-Based Wholesale Power Sales Tariff (SM–1), FERC Electric Tariff No. 10. A copy of this filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

FPC is requesting an effective date of November 8, 2001 for this Agreement.

Comment date: December 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Company

[Docket No. ER02–433–000]

Take notice that on November 30, 2001, Portland General Electric Company (PGE) filed with the Federal Energy Regulatory Commission (Commission) revised tariff sheets to its Open Access Transmission Tariff. The revised sheets are intended to: (1) Reduce PGE's rates for transmission service to reflect the refunctionalization of PGE's facilities; and (2) update PGE's cost-based rates for ancillary services.

PGE requests that the Commission make the transmission rate reductions effective as of November 1, 2001 and the ancillary services rates effective as of February 1, 2002.

Comment date: December 21, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30672 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2474–004 New York]

Erie Boulevard Hydropower L.P.; Notice of Availability of Final Environmental Assessment

December 6, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects, Division of Environmental and Engineering Review, reviewed the application for relicensing of the Oswego River Hydroelectric Project, located on the Oswego River in Oswego County, New York.

On November 24, 1999, the Commission staff issued a draft Environmental Assessment (EA) for the project and requested that any comments be filed within 45 days (later extended to January 31, 2000). Comments were filed by five entities and are addressed in the final EA for the project.

In the final EA, the Commission's staff analyze the potential environmental impacts of the existing project and conclude that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the final EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426, The final EA 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30699 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–439–000]

Columbia Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Delaware Valley Energy Expansion Project and Request for Comments on Environmental Issues, and Notice of Site Visit

December 6, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Delaware Valley Energy Expansion Project involving the abandonment, construction and operation of facilities by Columbia Gas Transmission Corporation (Columbia) in Chester and Delaware Counties, Pennsylvania and Gloucester County New Jersey.[1] The facilities being abandoned consist of 9.14 miles of 10- and 14-inch-diameter pipeline. The replacement and new facilities consist of 23.86 miles of 20- and 24-inch-diameter pipeline, addition of compression at two existing compressor stations, valves, and a meter station. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline

[1] Columbia's application was filed with the Commission on August 31, 2001, under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Columbia provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.fed.us*).

Summary of the Proposed Project

Columbia is proposing the Delaware Valley Energy Expansion Project to expand its existing system in Pennsylvania and New Jersey to provide firm transportation to the new Mantua Creek Power Plant being constructed in Gloucester County, New Jersey. This project would allow Columbia to deliver 165,000 Dekatherms per day of gas to the power plant.

In Pennsylvania, Columbia proposes to:

—abandon and replace the existing 10-inch-diameter Line 1856 in Chester County with a 20-inch-diameter pipeline beginning at Columbia's Downingtown Compressor Station, and extending about 8.84 miles to its terminus at Columbia's Eagle Compressor Station;

—abandon and replace the existing 14-inch-diameter Line 1556 in Chester County with a 24-inch-diameter pipeline beginning at Columbia's Eagle Compressor Station, and extending about 0.30 mile to the west;

—construct a 20-inch-diameter pipeline loop [2] along Columbia's existing Line 10345 referred to as Line 10360 (PA) for 5.10 miles beginning near Heyburn Road in Delaware County and extending to its terminus at Laurel Pipe Line Company's Buckeye Tank Farm;

—install an additional 6,000-horsepower single electric driven compressor unit in an extension to a new building to be constructed (under Docket No. CP01–260–000) on the site of its existing Eagle Compressor Station in Chester County; and

—install an additional 6,000-horsepower single electric driven compressor unit in an extension to an existing building on the site of its existing Downingtown Compressor Station in Chester County.

In New Jersey, Columbia would:

—construct Line 10360 (NJ) in Gloucester County consisting of a 20-inch-diameter pipeline that loops Columbia's existing Line 10345, beginning at Columbia's existing launcher/receiver lot along Route 130 in Logan Township and extending about 7.52 miles to its terminus at Columbia's Swedesboro Measuring and Regulating (M&R) Station;

—construct Line 10359 consisting of 20-inch-diameter pipeline in Gloucester County beginning at Columbia's West Deptford Meter Station which extends about 2.10 miles to its terminus at the Mantua Creek Power Plant site; and

—construct an M & R station at the terminus of Line 10359 within the power plant site.

Land Requirements for Construction

Construction of Columbia's proposed facilities would require about 281 acres of land, including construction right-of-way for the new pipeline, loops, valves, compressors, and the meter station; and extra work areas needed for pipe storage yards, staging areas, and warehouse sites. The loops would be constructed adjacent to Columbia's existing rights-of-way. For the construction of the pipelines, Columbia proposes to use a 20- to 95-foot-wide construction right-of-way. The construction right-of-way in most areas would overlap Columbia's existing permanent right-of-way or other permanent highway, railroad, natural gas transportation and electric right-of-ways from between 15 feet to 75 feet. Columbia indicates that about 161 acres would be maintained as new permanent right-of-way.

The compressors would be installed within Columbia's existing compressor stations, and would not require the clearing of additional land.

Construction access to Columbia's project generally would be via the construction right-of-way and existing road network. Columbia has identified 23 existing access roads necessary for the construction of its project and would construct 2 additional access roads requiring a total of 0.29 acre of disturbance.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

—Geology and soils
—Water resources and wetlands
—Vegetation and wildlife
—Threatened and endangered species
—Cultural resources
—Land use
—Reliability and safety
—Air quality and noise

We will evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia. This preliminary list of issues may be changed based on your comments and our analysis.

[2] A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it on both ends. The loop allows more gas to be moved through the pipeline system.

[3] ''We'', ''us'', and ''our'', refer to the environmental staff of the Office of Energy Projects (OEP).

Water Resources and Wetlands
—Crossing 16 perennial waterbodies.
—Crossing 44 wetlands, including 3.3 acres of forested wetlands.
Vegetation
—About 21.5 acres of forest to be cleared.
Federally-Listed Threatened and Endangered Species
—Potential impact on the bald eagle.
Land Use
—Impact on 107 residences located within 50 feet of the construction work area.

Public Participation and Site Visit

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your letter to:Linwood A. Watson, Jr., Acting Secretary,Federal Energy Regulatory Commission,888 First St., N.E., Room 1A,Washington, DC 20426;

• Label one copy of the comments for the attention of Gas 1, PJ–11.1;

• Reference Docket No. CP01–439–000; and

• Mail your comments so that they will be received in Washington, DC on or before January 7, 2002.

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 at *http://www.ferc.gov* under the ''e-Filing'' link and link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account''.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 2).[4] If you do not return the Information Request, you will be removed from the environmental mailing list.

On December 18 and 19, 2001, the Office of Energy Projects staff will conduct a precertification site visit of the project route and possible reroutes. All parties may attend. Those planning to attend must provide their own transportation. On December 18, 2001, we will be meeting at the Columbia Gas Office at 525 Highlands Blvd., Suite 100, Coatesville, PA at 8:00 am. On December 19, 2001, we will be meeting at the Logan Generating Station entrance on U.S. Route 130 about 1.5 miles south of U.S. Route 322 at 8:00 am.

For further information on attending the site visit, please contact the Commission's Office of External Affairs at (202) 208–0004.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 1). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

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).

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket#'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 01–30700 Filed 12–11–01; 8:45 am]

BILLING CODE 6717–01–P

[4] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on conneting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00749; FRL–6810–8]

Section 29 Annual Report on Conditional Registrations; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): ''Section 29 Annual Report on Conditional Registrations'' (EPA ICR No. 0601.07, OMB No. 2070–0026). This is a request to renew an existing ICR that is currently approved and due to expire August 31, 2002. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00749, must be received on or before February 11, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00749 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: vogel.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you hold or have applied for conditional pesticide registration and are required to submit annual pesticide volume data to EPA. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS codes	SIC codes	Examples of potentially affected entities
Manufacturers of pesticides and other agricultural chemicals	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Applicants for or holders of conditional pesticide registration

This table 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 this table could also be affected. The North American Industrial Classification System (NAICS) codes and the Standard Industrial Classification (SIC) codes are 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**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. 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/. 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/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 6091 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPP–00749. 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.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the 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–00749 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 Hwy., 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 and/or data electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in Units III.A.1. and III.A.2. 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–00749. Electronic comments may also be filed online at many Federal Depository Libraries.

B. 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 listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider when 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 collection 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.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Section 29 Annual Report on Conditional Registrations.

ICR numbers: EPA ICR No. 0601.07, OMB No. 2070–0026.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire August 31, 2002.

Abstract: Section 29 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires the EPA Administrator to submit an annual report to Congress before February 16 of each year. This report includes the total number of applications for conditional registration filed under sections 3(c)(7)(B) and 3(c)(7)(C) of FIFRA during the previous fiscal year. Of those applications approved, the report must also identify the Administrator's findings in each case, the conditions imposed and any modification of such conditions in each case, and the quantities produced of such pesticides. All of this information, except production volume data, is obtained from Agency files. EPA must rely on outside sources for production volume data. Therefore, EPA requires registrants with conditionally registered pesticides to provide production volume data from the preceding fiscal year. There are no forms or third-party disclosure requirements associated with this information collection activity.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 84 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Applicants for conditional pesticide registration whose applications are approved during a given fiscal year.

Estimated total number of potential respondents: 30.

Frequency of response: Annual.

Estimated total/average number of responses for each respondent: 1–2.

Estimated total annual burden hours: 84.

Estimated total annual burden costs: $6,612.00.

VI. Are There Changes in the Estimates from the Last Approval?

The registrant burden estimate for this information collection has remained at 84 hours per year, with the number of respondents reporting and the number of conditional registrations each remaining the same. The individual burden per chemical for reporting has remained constant at 1.4 hours, while the burden per registrant has remained constant at 2.8 hours, with an average of two chemicals per registrant.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: November 27, 2001.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 01–30272 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00751; FRL–6811–9]

Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): ''Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides'' (OMB NO. 2070–0027; EPA NO. 0161.09). This is a request to renew an existing ICR that is currently approved and due to expire August 31, 2002 . The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00751, must be received on or before February 11, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00751 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: vogel.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you export pesticides that are not registered in the United States. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS codes	SIC codes	Examples of potentially affected entities
Manufacturers of pesticides and other agricultural chemicals	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Exporters of unregistered pesticide products

This table 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 this table could also be affected. The North American Industrial Classification System (NAICS) codes and the Standard Industrial Classification (SIC) codes are 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.**

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. 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/. 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/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 6092 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPP–00751. 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.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the 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–00751 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 Hwy., 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 and/or data electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in Units III.A.1. and III.A.2. 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–00751. Electronic comments may also be filed online at many Federal Depository Libraries.

B. 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 listed under **FOR FURTHER INFORMATION CONTACT.**

C. What Should I Consider when 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 collection 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.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides.

ICR numbers: EPA ICR No. 0161.09, OMB No. 2070–0027.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire August 31, 2002.

Abstract: This information collection program is designed to enable the EPA to provide notice to foreign purchasers of unregistered pesticides exported from the United States that the pesticide product cannot be sold in the United States. Section 17(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires an exporter of any pesticide not registered under FIFRA section 3 or sold under FIFRA section 6(a)(1) to obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in the United States and cannot be sold in the United States. A copy of this statement must be transmitted to an appropriate official of the government in the importing country. The purpose of the purchaser acknowledgment statement requirement is to notify the government of the importing country that a pesticide judged hazardous to human health or the environment, or for which no such hazard assessment has been made, will be imported into that country. This information is submitted in the form of annual or per-shipment statements to the EPA, which maintains original records and transmits copies thereof to appropriate government officials of the countries which are importing the pesticides.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 24,753 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: All exporters of unregistered pesticides.

Estimated total number of potential respondents: 2,500.

Frequency of response: Annual or per-shipment.

*Estimated total/average number of responses for each respondent:*1–2.

Estimated total annual burden hours: 24,753.

Estimated total annual burden costs: $1,948,975.

VI. Are There Changes in the Estimates from the Last Approval?

The total annual respondent burden for this ICR is estimated to be 24,753 hours, an increase of 3,302 hours over the present ICR. This slight increase in respondent burden is due to three factors: (1) EPA has revised the burden estimate for the purchaser acknowledgment requirement to more accurately reflect the numbers of foreign purchaser acknowledgment statements (FPASs) submitted to EPA under the revised policy; (2) the burden estimate includes requirements imposed by the export labeling requirement, due to the new requirement in the PRA to estimate the cost of third party notifications, and (3) costs have increased due to more realistic labor rates supplied by the Bureau of Labor Statistics, which more accurately reflect the costs borne by the exporters of pesticide products.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 3, 2001.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 01–30596 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00753; FRL–6812–8]

FIFRA Section 24(c) Special Local Need Registrations; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): ''FIFRA Section 24(c) Special Local Need Registrations'' (EPA ICR No. 0595.08, OMB No. 2070–0055). This is a request to renew an existing ICR that is currently approved and due to expire August 31, 2002. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00753, must be received on or before February 11, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00753 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: vogel.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a state government that is involved in issuing pesticide registrations. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS codes	SIC codes	Examples of potentially affected entities
State and territorial governments	92411—Administration of air and water resource and solid waste management programs	9241—Administration of environmental quality programs	State and territorial governments involved in issuing pesticide registrations

This table 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 this table could also be affected. The North American Industrial Classification System (NAICS) codes and the Standard Industrial Classification (SIC) codes are 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.**

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. 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/. 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/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 6093 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPP–00753. 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.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the 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–00753 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 Hwy., 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 and/or data electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in Units III.A.1. and III.A.2. 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–00753. Electronic comments may also be filed online at many Federal Depository Libraries.

B. 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 listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider when 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 collection 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.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: FIFRA Section 24(c) Special Local Need Registrations.

ICR numbers: EPA ICR No. 0595.08, OMB No. 2070–0055.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire August 31, 2002.

Abstract: This data collection program is designed to provide the EPA with the necessary data to review approval of a state issued pesticide registration. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 24(c) authorizes the States to register additional uses of federally registered pesticides for distribution and use within the State to meet a special local need (SLN). A state-issued registration under FIFRA section 24(c) is deemed a federal registration for the purposes of the pesticide's use within the State's boundaries. A State must notify EPA, in writing, of any action it takes, i.e., issues, amends, or revokes a state registration. The Agency has 90 days to disapprove the registration. In such cases, the State is responsible for notifying the affected registrant.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 37,083 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: State and territorial governments (the 50 states plus Washington, D.C., Puerto Rico, the U.S. Virgin Islands, Guam, and the islands of the Pacific Territory and American Samoa).

Estimated total number of potential respondents: 60.

Frequency of response: Annual.

Estimated total/average number of responses for each respondent: 1–3.

Estimated total annual burden hours: 37,083.

Estimated total annual burden costs: $3,557,338.

VI. Are There Changes in the Estimates from the Last Approval?

The total estimated annual respondent burden for this ICR is 37,083 hours, an increase of 12,479 hours over the previous ICR. The average number of applications under this program has increased from 350 per year under the previous ICR to 526 per year for the past 3 years. In addition, costs have increased from $2,360,287 to $3,557,338 due to more realistic labor rates supplied by the Bureau of Labor Statistics.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval

process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 3, 2001.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 01–30597 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1053; FRL–6809–8]

Notice of Filing of a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1053, must be received on or before January 11, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1053 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Carol E. Frazer PhD., Biopesticides and Pollution Prevention Division, (7511), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8810; e-mail address: frazer.carol@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 PF–1053. 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 Highway, 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 PF–1053 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 PF–1053. 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. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket 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. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 27, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

EPA has received a pesticide petition (PP) 1F6314 from 3M, St. Paul, Minnesota 55144–1000, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticides the C_8, C_{10} and C_{12} saturated fatty acid monoesters of glycerol and propylene glycol in or on all raw agricultural commodities and food.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, 3M has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by 3M and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

3M

PP 1F6314

A. Product Name and Proposed Use Practices

3M's VWX–42 Technology System is comprised of six very closely related active ingredients that are used singly or in combination against Gram positive and Gram negative bacteria, fungi, yeasts and lipid coated viruses to control spoilage of food and feed crops after harvest. The choice of which active ingredient or mix of ingredients to use is determined by the identity of the pest organisms to be controlled and the characteristics desired for the end-use formulation. The active ingredients are generally applied at levels between 0.1% and 1% in the diluted formulation at a rate sufficient to wet thoroughly the commodity being treated.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The Chemical Abstract Services (CAS) index names for the six active ingredients are as follows:

- Octanoic acid, monoester with 1,2,3-propanetriol, CAS Registry No. 26402–26–6;
- Decanoic acid, monoester with 1,2,3-propanetriol, CAS Registry No. 26402–22–2;
- Dodecanoic acid, monoester with 1,2,3-propanetriol, CAS Registry No. 27215–38–9;
- Octanoic acid, monoester with 1,2-propanediol, CAS Registry No. 68332–79–6;
- Decanoic acid, monoester with 1,2-propanediol, CAS Registry No. 68795–69–7; and
- Dodecanoic acid, monoester with 1,2-propanediol, CAS Registry No. 27194–74–7.

The residues expected in treated raw agricultural commodities and food are the parent compounds and/or their hydrolysis products (metabolites). The hydrolysis products are a mixture of the free fatty acid and glycerol or propylene glycol. The glycerol fatty acid monoesters are natural components in dietary fats and natural breakdown products from the metabolism of fat (triacylglycerol) in all living systems. The propylene glycol monoesters are metabolized by the same pathways and with the same ease as glycerol. Both types of active ingredient are metabolized by living matter as food. The first step in their metabolism is hydrolysis to free fatty acid and glycerol or propylene glycol.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* An unreasonable worst cast physical model was constructed to generate the residue data. A typical end-use formulation was prepared containing one of the active ingredients. A typical diluted treatment solution (0.86% active ingredient by weight) was prepared by diluting the formulation with water. Eighteen different raw agricultural commodities were obtained from local supermarkets in St. Paul, Minnesota and treated with the diluted formulation by soaking at room temperature for 15 minutes. Ten samples of each commodity were weighed to the nearest milligram before treatment and allowed to drain on a wire grate for 1 minute before reweighing. The difference between pre- and post-soak weights was used as the measure of residue for each commodity sample.

The commodities obtained from supermarket shelves, particularly beans, had inevitably lost moisture between the time of harvest and the time when they were treated to generate residue data. The treatment solution, being

aqueous, under the test conditions replaced moisture lost since harvest. In some cases, the absorption of the diluted aqueous pesticide formulation by the commodity was substantially greater than what would be expected if it had been treated immediately after harvest and treated by wetting its surface rather than soaking. Although certain residue levels determined by our worst-case physical model were clearly excessive, all of the experimentally determined values were included in the dietary analysis in keeping with the intended worst-case nature of the assessment. The experimentally determined residue levels used in the aggregate dietary risk assessment ranged from 10 to 400 parts per million (ppm) (milligrams/kilograms (mg/kg) commodity) active ingredient residue.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An exemption from tolerance is sought because use of the VWX-42 Technology System active ingredients will create only minuscule exposures (< 1 mg/kg-bodyweight (bwt)/day) when compared to the natural levels of such compounds in living tissue and in foods (~50–100 grams per/day (g/day)), and compared to the levels permitted in food as direct additives (g/day). Hence, there will be no need to monitor for pesticide residues and there is no need for an analytical method for detecting and measuring such residues in the commodities treated.

C. Mammalian Toxicological Profile

A substantial body of primary toxicology data were generated to support EPA registration as biochemical pesticides. In all studies, EPA's limit doses were used and the test compounds were found to be safe, but all tests were not conducted on all 6 active ingredients. Propylene glycol monocaprylate (the C_8 ester) was selected as the test material to represent all 6 active ingredients in subchronic testing (90–day rat oral toxicity study). Because the metabolism and toxicity of the VWX-42 Technology System active ingredients have been well documented in the scientific literature and all six active ingredients are known to be identical with respect to toxicity and metabolism, a new 90–day study was conducted on only 1 of the 6 active ingredients. A full acute toxicity test battery (6 studies) was generated on the C_8 propylene glycol monoester and on the C_{12} glycerol ester, thereby bounding the chemical structures of all 6 ingredients.

The results of the individual studies are summarized below.

1. *Acute oral toxicity (rat) for glycerol monolaurate: Non-toxic.* A group of 6 fasted rats (3 male and 3 female) received a single oral gavage dose of glycerol monolaurate, formulated in corn oil and administered at a dose level of 5,000 mg/kg bwt, in a limit test. No abnormalities were revealed in any of the animals at the macroscopic examination at study termination on Day 15.

The acute lethal oral dose to rats was demonstrated to be greater than 5,000 mg/kg.

2. *Acute oral toxicity (rat) for propylene glycol monocaprylate: Non-toxic.* A group of 6 fasted rats (3 males and 3 females) received a single oral gavage dose of the test substance administered at a dosage of 5,000 mg/kg bwt. Clinical signs of reaction to treatment were confined to piloerection (all rats) and increased salivation (one female only), both evident within a few minutes of dosing with only piloerection persistent during the remainder of Day 1. There were no signs of reaction to treatment and piloerection had resolved by Day 2 in female rats and by Day 4 in male rats. No abnormalities were revealed in any of the animals at the macroscopic examination at study termination on Day 15.

The acute lethal oral dose to rats of propylene glycol monocaprylate was demonstrated in this study to be greater than 5,000 mg/kg bwt.

3. *Acute dermal toxicity (rat) for glycerol monolaurate: Non-toxic.* A group of 10 rats (5 males and 5 females) received a single topical application of glycerol monolaurate formulated in corn oil and administered at a dosage of 5,000 mg/kg bwt. There were no clinical signs of reaction to treatment observed in any animal throughout the study. All animals were killed as scheduled at study termination (Day 15) and subjected to a macroscopic examination. No macroscopic abnormalities were observed for animals killed at study termination on Day 15.

The acute lethal dermal dose to rats of glycerol monolaurate was demonstrated to be greater than 5,000 mg/kg bwt.

4. *Acute dermal toxicity (rat) for propylene glycol monocaprylate: Non-toxic.* A study was performed to assess the acute dermal toxicity of propylene glycol monocaprylate to the rat. A group of 10 rats (5 males and 5 females) received a single topical application of the test substance at a dosage of 5,000 mg/kg bwt. All animals were killed as scheduled at study termination (Day 15) and subjected to a macroscopic examination. No macroscopic abnormalities were observed for animals killed at study termination on Day 15.

The acute lethal dermal dose to rats of propylene glycol monocaprylate was demonstrated to be greater than 5,000 mg/kg bwt.

5. *Acute inhalation (rat) for glycerol monolaurate: Harmless by inhalation.* In all instances, the aerosol generator was blocked following the start of generation. The waxiness of glycerol monolaurate made it impossible to generate aerosols. Because respirable particles cannot be produced from such low melting waxy materials, the test substance is considered harmless by the inhalation route of exposure under normal handling conditions.

6. *Acute inhalation (rat) for propylene glycol monocaprylate: Non-toxic.* The acute toxicity of propylene monocaprylate was assessed by exposing a group of rats (5 males and 5 female), for a period of 4 hours, to a droplet aerosol generated from the test substance at a target concentration of 5 mg/L. Another group (5 male and 5 female), acting as a control was exposed to clean dry air only. The nominal concentration of propylene monocaprylate was 5.6 mg/L. The mass median aerodynamic (MMAD) was 2.0 μm and was within the ideal range (1 μm to 4 μm) for an acute inhalation study. Approximately 88% of the particles were considered of a respirable size (< 7 μm in aerodynamic diameter). The LC_{5O} (4–hour inhalation) for propylene glycol monocaprylate, is in excess of 4.92 mg/L (4920 ppm) in air. EPA's limit dose for this test is 2 mg/L.

7. *Eye irritation (rabbit) for glycerol monolaurate: Slight irritant.* Three rabbits were each administered a single ocular dose of 0.1 mL of the test substance (mean weight 60 mg) and observed for up to 7 days after instillation. The instillation in one animal elicited a corneal lesion and iritis (both Graded 1) 48 hours post dose. All 3 rabbits exhibited transient conjunctival inflammation (up to Grade 3). Resolution was complete in two instances within approximately 72 hours of dosing and in one animal 7 days after dosing. The test material is considered a slight eye irritant.

8. *Eye irritation (rabbit) for propylene glycol monocaprylate: Non-irritant.* Three rabbits were each administered a single ocular dose of 0.1 mL of propylene glycol monocaprylate test substance and observed for three days after instillation. The single instillation of propylene glycol monocaprylate elicited in two of the three rabbits a transient, slight to well-defined conjunctival irritation only. The test

substance is not considered an ocular irritant.

9. *Skin irritation (rabbit) for glycerol monolaurate: Non-Irritant.* Three rabbits were each administered a single dermal dose of 0.5 gm of the test substance glycerol monolaurate, under semi-occlusive conditions for 4 hours and observed for up to 11 days. The test material produced transient slight erythema only in one animal. The test substance is not considered a dermal irritant.

10. *Skin irritation (rabbit) for propylene glycol monocaprylate: Non-irritant.* Three rabbits were each administered a single dermal dose of 0.5 mL of the test substance propylene glycol monocaprylate under semi-occlusive conditions for 4 hours and observed for up to 11 days. Propylene glycol monocaprylate produced only slight erythema in all animals. The test substance is not considered a dermal irritant.

11. *Skin sensitization (guinea-pig) for glycerol monolaurate: Non-sensitizer.* Guinea pigs were dosed by intradermal injection and topical application. Based on the results of a preliminary study and in compliance with regulatory guidelines, the following dose levels were selected:

- Intradermal injection: 2.5% w/v in sterile water
- Topical application: 10% w/v in sterile water
- Challenge applications: 0.5 and 1% w/v in sterile water

Ten test and five control guinea pigs were used in this study. Following the first challenge application, negative responses were observed in six test animals, inconclusive responses were seen in three animals and a positive response was observed in the remaining test animal. A second challenge was conducted to clarify these reactions. Following the second challenge application glycerol monolaurate did not produce dermal reactions in any of the test or control animals. Glycerol monolaurate is not considered to have the potential to cause skin sensitization.

The sensitivity of the guinea-pig strain used by the laboratory is checked periodically with a weak/moderate sensitizer - hexyl cinnamic aldehyde (HCA). In this study HCA produced evidence of skin sensitization (delayed contact hypersensitivity) in nine of the ten animals, thus confirming the sensitivity and reliability of the experimental technique.

12. *Skin sensitization (guinea-pig) for propylene glycol monocaprylate: Potential sensitizer.* The guinea pigs were dosed by intradermal injection and topical application. Based on the results of a preliminary study and in compliance with the regulatory guidelines, the following dose levels were selected:

- Intradermal injection: 0.5% v/v in sterile water
- Topical application: as supplied
- Challenge application: 25 and 50% v/v in sterile water

Ten test and five control guinea pigs were used in this study. In this study propylene glycol monocaprylate produced evidence of skin sensitization (delayed contact hypersensitivity) in all of the test animals. Propylene glycol monocaprylate is considered to have the potential to cause skin sensitization. Propylene glycol itself is known to cause allergic reactions in patients receiving medical treatments containing this substance.

The sensitivity of the guinea-pig strain used was checked periodically by the laboratory with a weak to moderate sensitizer - hexyl cinnamic aldehyde (HCA). In this study HCA produced evidence of skin sensitization (delayed contact hypersensitivity) in nine of the ten animals, thus confirming the sensitivity and reliability of the experimental technique.

13. *28–Day oral (rat): for propylene glycol monocaprylate: Non-toxic.* The effects of propylene glycol monocaprylate (T–7475.8) were assessed in rats (groups of 5 males and 5 females) by oral gavage administration once a day for 4 weeks, employing dose levels of 0, 500, 750 or 1,000 mg/kg/day. Doses up to 1,000 mg/kg/day were well tolerated with the only effects noted being higher protein and albumin values and a higher lung and liver weight, all in females. In the absence of histopathological examination, the toxicological importance of these findings is unclear. However, it was considered that 1,000 mg/kg/day was well tolerated and that it would be suitable for use as a high dose level in the subsequent 13 week toxicity study.

14. *13–Week oral (rat) for propylene glycol monocaprylate: Non-toxic.* The systemic toxicity of propylene glycol monocaprylate (T–7475.8) was assessed in groups of rats (20 males and 20 females per group) by oral (gavage) administration at 0, 100, 500, and 1,000 mg/kg/day dose levels for 13 weeks. There were no unscheduled deaths in any of the groups and clinical observation, neurotoxicity, metabolic parameters and organ histopathology indicated no changes of toxicological significance. It was concluded that a dosage of 1,000 mg/kg/day was considered to be a no observable adverse effect level (NOAEL) for both sexes.

Waivers of genotoxicity, reproductive and developmental toxicity studies were also requested on the bases described below.

15. *Genotoxicity.* Because the VWX–42 active ingredients themselves in vertebrate systems are immediately metabolized like any fats to polyols and free fatty acids, upon ingestion they become indistinguishable from the natural background of such compounds in living systems. Polyols and free fatty acids in living systems are not genotoxic. Hence, waivers were requested for all genotoxicity testing requirements on the basis that conducting such tests would not be of value to EPA in its evaluation of risks. The VWX–42 active ingredients are already known, from a metabolic standpoint, not to be genotoxic.

16. *Reproductive and developmental toxicity.* Also on the basis of their metabolism, the VWX–42 active ingredients, and their natural breakdown products, are known not to be reproductive or developmental toxicants. Waivers were requested for all such testing requirements on the basis that conducting such tests would not be of value to EPA in its evaluation of risks.

17. *Scientific literature on toxicity and metabolism.* Basic toxicity testing on mono and diacylglycerols and saturated fatty acids was done in the 1930–1960 period. The available data include extensive testing in intermediate and long-term studies. Less work has been published on propylene glycol saturated fatty acid esters, but the available data are adequate to demonstrate an equivalence between propylene glycol esters and acylglycerols. Comprehensive reviews are available prepared by a number of sources including the Food and Drug Administration (FDA) and the Food and Agricultural Organization of the United Nations (FAO) and the World Health Organization (WHO) through the Joint FAO/WHO Expert Committee on Food Additives (JECFA).

The NOAELs for mono acylglycerols, regardless of the saturated fatty acid, are similar. Rats can be fed from 10–15% in the diet for a lifetime without ill effects, dose levels corresponding to 5 g/kg-bwt/day. Rats fed propylene glycol monosuccinate and monostearate at levels up to 10% of the diet for six months showed no evidence of gross or histological pathology attributable to treatment. Dogs fed at the same levels for six months showed no signs of toxicity.

The particular fatty acid moiety in mono acylglycerols does not matter because vertebrate systems are capable

of metabolizing each of the acids in the range of C_8 to C_{18} with equal facility. Oxidation of fatty acids is a primary source of energy in vertebrate systems. Fatty acids are supplied in the diet in the form of triacylglycerols (fats) which are hydrolyzed by pancreatic lipase enzymes to form free fatty acids, glycerol and mono acylglycerols. The VWX–42 gylcerol active ingredients are indistinguishable from the natural acylglycerols and fatty acids found in the intestine following ingestion of fats.

Specificity of the pancreatic lipase enzyme is independent of the nature of the fatty acid. It is also not stereospecific in its action and glycerol esters and propylene glycol esters are hydrolyzed by it with equal facility.

Studies with ^{14}C-labeled propylene glycol show that it is readily absorbed from the gastrointestinal tract and rapidly converted in the liver to ^{14}C-glycogen or $^{14}CO_2$. In a like manner, when ^{14}C-glycerol is administered to the rat, radiolabel appears in expired CO_2, blood glucose, liver glycogen, liver fat and liver phosphatides within 15 minutes. Within 6 hours, 40% of the label is contained in expired CO_2 and the remainder is distributed through the test animal. Very small amounts are excreted.

FDA has looked at metabolism of propylene glycol mono and distearate as a model compounds to represent propylene glycol fatty acids. In studies on radiolabeled propylene glycol distearate the rate limiting factor in the metabolism was found to be hydrolysis of the ester, which is complete in about 3 hours. In 5 hours, 94% of the propylene glycol is absorbed and 94% of the absorbed material is found in expired CO_2 in 72 hours. The fatty acid portion of the ester is absorbed and metabolized more slowly than the propylene glycol. Only 51% of the stearic acid label was expired as CO_2 in the same period.

D. Aggregate Exposure

1. *Dietary exposure.* Aggregate dietary exposure estimates were generated using EPA's Dietary Exposure Potential Model (DEPM) customarily used by the agency in making such estimates. The model is designed to generate dietary exposure estimates by combining data from established food consumption data bases with residue data. In this case, food consumption data came from the 10th National Food Consumption Survey conducted during the three year period of 1994–1996 by the Agricultural Research Service of the U.S. Department of Agriculture. These data are also known as the Continuing Survey of Food Intake by Individuals, 1994–1996 (CSFII 1994–1996).

i. *Food.* Food residue estimates were generated for use in the DEPM analysis to simulate very broad use of the VWX–42 active ingredients. Specifically, residues estimates were constructed for all food commodities corresponding to the 18 raw agricultural commodities (RACs) for which residue data were generated for the following major food groups:

- Fruits;
- Vegetables;
- Beverages; and
- Infant food.

In keeping with the worst case nature of the analysis, residue data for a tested commodity was used also for similar commodities not tested (*e.g.*, spinach values were used for other delicate greens; kale values were used for other heavy greens such as collard; peach values were used for apricots). The assumption was also made that residue levels are not changed by cooking and that fruit and vegetable mixtures contain 50% of one or more RAC, unless the composition of the mixture is specified.

Total dietary exposure estimates were generated using the model for the U.S. population and 20 subpopulations, including non-nursing infants and children. The subpopulation groups were defined by age, gender, geographic location, ethnicity and income level. All calculations represented residue levels assuming treatment of 100% of every commodity consumed in the U.S. for which residue estimates could be generated, another severe worst-case assumption. The model produced data tables containing the consumption of each food, its assumed residue level and the calculated exposure from that consumption in µg/kg-bwt/day for each of the subpopulations.

For all subpopulation groups, the commodity that contributed in the analysis the most to exposure was cooked green beans. This result reflects the fact that green beans absorbed an unexpectedly large amount of treatment solution in the experimental procedure used to generate RAC residue estimates. Based upon the worst-case data and assumptions described above, the model calculated the highest exposure of 0.5 mg/kg-bwt/day for non-nursing infants. Dietary exposure for the total U.S. population was less than 0.2 mg/kg-bwt/day.

ii. *Drinking water.* All anticipated or proposed use for the VWX–42 active ingredients will be indoors and the active ingredients are not soluble in water. Hence, drinking water is not a feasible route of exposure.

2. *Non-dietary exposure.* The only non-dietary exposures from pesticidal uses of the VWX–42 active ingredients will be occupational, i.e., commercial applicator/mixer loader exposures. Occupational exposures are not included under the FFDCA in the assessment of aggregate exposures for the purpose of establishing tolerances and exemptions from tolerance.

E. Cumulative Exposure

In assessing their cumulative effects, the VWX–42 active ingredients are members of a much larger class of compounds that are toxicologically and metabolically equivalent. This class of compounds are dealt with by all vertebrate systems as food rather than toxicants. Glycerol fatty acid monoesters are natural components in dietary fats and natural breakdown products from metabolism of fat (triacylglycerol) in all living systems. Fatty acid esters of propylene glycol also occur as direct food additives in the human diet in substantial quantities. Toxicologically and metabolically the glycerol and propylene glycol esters are equivalent.

The proposed use of VWX–42 active ingredients as pesticides will contribute a negligible amount (total U.S. population worst case estimate <0.2 mg/kg/day) to the existing cumulative exposure to the class of compounds when compared to natural levels of such compounds and their metabolites in tissue and foods (50–100 g/day in humans for glycerol esters), and to the levels permitted in food as direct additives (grams per day).

F. Safety Determination

1. *U.S. population.* Generating a quantitative measure of safety, such as a margin of exposure value (MOE), is difficult for the VWX–42 active ingredients because they function as foods rather than toxicants in all test animal systems, giving no clear toxicity endpoints even when tested at levels representing a substantial portion of the diet. Both acute and subchronic primary data generated to support this petition show no observed adverse effects at the limit doses established for such tests by EPA. Subchronic and chronic exposure studies reported in the literature run at much higher levels (e.g., 10% or more of the total diet) also produced no adverse effects. In its review of such compounds, the JECFA observed that ''dietary loads of a food additive in excess of 10 percent are of little value in assessment of safety-in-use...'', and the committee based its conclusion of safety upon the biochemical and metabolic evidence that the breakdown

product of such additives are ''normal dietary constituents.''

MOE levels can be calculated for the U.S. population as shown below in Table 1, using various NOAELs, including the NOAEL for the 90–day gavage study submitted in support of this petition. These values represent the highest levels tested, not the highest level tolerated without adverse effects. JECFA has also established an allowable daily intake value (ADI) for propylene glycol monostearate of 25 mg/kg-bwt/day that may be used to derive an MOE estimate. The several MOE calculations presented in Table 1 demonstrate that exposures, even when estimated using severe worst-case assumptions, are well below any level of concern.

TABLE 1. CALCULATED MARGINS OF EXPOSURE FOR VWX–42 ACTIVE INGREDIENTS

Basis for calculation	Acceptable level	Estimated exposure	Margin of exposure
NOAEL, 90–day gavage study using propylene glycol monocaprylate	NOAEL = 1,000 mg/kg-bwt/day	U.S. Population = 0.13 mg/kg-bwt/day Non-nursing infants = 0.44 mg/kg-bwt/day	U.S. population = 7,690
FDA NOAEL, 90–day dietary study with propylene glycol monostearate*	NOAEL = 7.52% of diet (= highest dose tested = 3.22 g/kg-bwt/day)	Same as above	U.S. population = 24,770
JECFA ADI for propylene glycol monostearate*	ADI = 25 mg/kg-bwt/day including safety factor of 100	Same as above	U.S. population = 19,230

*Propylene glycol monostearate is widely accepted as a surrogate for all glycerol and propylene glycol monoesters.

2. *Infants and children*. MOE levels for infants and children can be calculated as shown in Table 2 using the same toxicity endpoints as for the U.S. population.

TABLE 2. CALCULATED MARGINS OF EXPOSURE FOR VWX–42 ACTIVE INGREDIENTS

Basis for calculation	Acceptable level	Estimated exposure	Margin of exposure
NOAEL, 90–day garage study using propylene glycol monocaprylate	NOAEL = 1,000 mg/kg-bwt/day	Non-nursing infants = 0.44 mg/kg-bwt/day Children 1–6 = 0.28 mg/kg-bwt/day Children 7–12 = 0.15 mg/kg-bwt/day	Non-nursing infants = 2,270 Children 1–6 = 3,570 Children 7–12 = 6,670
FDA NOAEL, 90–day dietary study with propylene glycol monostearate*	NOAEL = 7.52% of diet (= highest dose tested = 3.22 g/kg-bwt/day)	Same as above	Non-nursing infants = 7,320 Children 1–6 = 11,500 Children 7–12 = 21,470
JECFA ADI for propylene glycol monostearate*	ADI = 25 mg/kg-bwt/day, including safety factor of 100	Same as above	Non-nursing infants = 5,680 Children 1–6 = 8,930 Children 7–12 = 16,670

*Propylene glycol monostearate is widely accepted as a surrogate for all glycerol and propylene glycol monoesters.

G. Effects on the Immune and Endocrine Systems

Because VWX–42 active ingredients in vertebrate systems are immediately metabolized, like any fat, to polyols and free fatty acids, upon ingestion they become indistinguishable from the natural background of such compounds in living systems. On the basis that they are natural components of vertebrate systems, the VWX–42 active ingredients, and their breakdown products, are not expected to have any effect on immune and endocrine systems.

H. Existing Tolerances

No tolerances exist for any of the VWX–42 Technology System compounds as pesticide active ingredients. They may be used as inert ingredients in pesticide formulations and many clearances exist under the FFDCA for their use as direct and indirect food additives.

Mono and diglycerides from fats or oils or fat-forming acids are affirmed as GRAS as direct food additives under 21 CFR 184.1505. Mono and diglycerides of C_8–C_{14} fatty acids are exempt from the requirement for tolerance under 40 CFR 180.1001(c) for use as surfactants and adjuvants in pesticide formulations. Numerous fatty acids, the hydrolysis products of both the glycerol and propylene glycol esters, are themselves also affirmed as GRAS (21 CFR 184.1025).

Propylene glycol mono and diesters of fatty acids are permitted under 21 CFR 172.856 for general use in food; 21 CFR 172.860 permits the corresponding fatty acid metabolites in foods; and 21 CFR 172.863 permits salts of fatty acids in food. The monoesters are also permitted under 21 CFR 175.105 as ingredients in adhesives used in food contact applications. Propylene glycol esters of fatty acids are also cleared by USDA as emulsifiers in margarine or oleomargarine at 2% (48 FR 52696, Nov. 22, 1983).

Glycerol, a hydrolysis product of mono acylglycerols, is listed by FDA as a substance generally recognized as safe (GRAS) as a multiple purpose food additive when used in accordance with good manufacturing practice (21 CFR 182.1320) and as a GRAS substance when migrating to food from paper and

paperboard products (21 CFR 182.90). An exemption from tolerance has been established by FDA under 21 CFR 182.99 and by EPA under 40 CFR 180.1001(c) and (e) for its use as a solvent and co-solvent in pesticide formulations and as an adjuvant when added to pesticide dilutions by growers or applicators prior to application. It is also deemed GRAS by the Expert Panel of the Flavor and Extract Manufacturers'Association of America.

Propylene glycol, a hydrolysis product of the propylene glycol esters, is affirmed as GRAS under 21 CFR 184.1666. It is used as an anticaking agent, antioxidant, dough strengthener, emulsifier, flavor agent, formulation aid, humectant, processing aid, solvent and vehicle, stabilizer and thickener, surface-active agent, and tenderizer in foods at levels not to exceed current good manufacturing practice. The approved uses result in maximum levels, as served of 5% in alcoholic beverages, 24% in confections and frostings, 2.55% in frozen dairy products, 97% in seasonings and flavoring, 5% in nuts and nut products, and 2% in all other food categories. Propylene glycol is also exempt from the requirement of tolerance by EPA under 40 CFR 180.1001(c) and (e), and has been deemed GRAS by the Expert Panel of the Flavor and Extract Manufacturers' Association of America.

I. International Tolerances

No international tolerances have been established for the active ingredients in the VWX–42 Technology system. The FAO and the WHO through the JECFA has reviewed mono and diacylglycerol and propylene glycol esters of fatty acids and determined that they may be used safely in foods at levels of 1–3 grams per day for an adult. It as observed that ''alterations in the fatty acid distribution or polyglycerol content of individual members of a group of diverse substances have no toxicological bearing and only affect the physical and emulsifying properties of each ester.'' The Committee concluded safety based upon the biochemical and metabolic evidence that the breakdown products of such additives are normal dietary constituents.

[FR Doc. 01–30371 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1058; FRL–6812–7]

Notice of Filing a Pesticide Petition to Establish a Tolerance fora Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1058, must be received on or before January 11, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1058 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9368; e-mail address: jamerson.hoyt@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 PF–1058. 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 Highway, 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 PF–1058 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 PF–1058. 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. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket 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. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 27, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by BASF Corporation, Agricultural Products, 26 Davis Drive, Research Triangle Park, NC 27709 and represents the view of BASF Corporation. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4

PP 0E6185

EPA has received a pesticide petition (0E6185) from the Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of diflufenzopyr, 2-(1-(3,5-difluorophenylamino]carbonyl)-hydrazono]ethyl)-3-pyridinecarboxylic acid, and its metabolites convertible to M1 (8-methylpyrido[2,3-d]pyridazin-5(6H)-one) in or on crop group 17 (grass forage, fodder, and hay group) including: Forage at 3.0 parts per million (ppm); hay at 1.5 ppm; and corn, sweet, fresh at 0.05 ppm; corn, sweet, forage at 0.05 ppm; corn, sweet, stover at 0.05 ppm, and corn, pop, stover at 0.05 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue in plants (field corn) is understood. In field corn, no diflufenzopyr was detected in any of the corn matrices; metabolites comprising approximately 10% total radioactive residue (TRR) include M1 (8-methylpyrido[2,3-d]pyridazin-5(6H)-one), M10 (8-hydroxymethyl-5(6H)-pyrido[2,3-d]pyridazone) and its glucose conjugate, and M9 (8-methylpyrido[2,3-d]pyridazine-2,5(1H,6H)-dione in forage and fodder, and 6–14% TRR lignin was found in fodder. Corn grain contained 3–4 discrete unknowns, all at less than 10% TRR or less than 0.05 ppm each. The residues of concern in plants are diflufenzopyr, 2-(1-[([3,5-difluorophenylamino]carbonyl)-hydrazono]ethyl)-3-pyridinecarboxylic acid, and its metabolites convertible to M1 (8-methylpyrido [2,3-d]pyridazin-5(6H)-one).

2. *Analytical method*. BASF Corporation has provided suitable independently validated analytical methods for detecting and measuring levels of diflufenzopyr and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels described in these and the existing tolerances. Adequate enforcement

methodology (gas chromatography) is available to enforce the tolerance expression. The method may be requested from Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305–5229.

3. *Magnitude of residues*. Residue trials have been conducted with dicamba/diflufenzopyr end use product distinct on pasture and rangeland grasses and the sweet corn crop for expanded use requested in the subject petition. The tolerances listed below are based on the maximum expected residue from geographically representative field trial data. Crop group 17 (grass, forage, fodder, and hay group) including: Forage at 3.0 ppm; hay at 1.5 ppm; and corn, sweet, fresh at 0.05 ppm; corn, sweet, forage at 0.05 ppm; corn, sweet, stover at 0.05 ppm, and corn, pop, stover at 0.05 ppm.

4. *Animal residue*. Data from metabolism studies in goat and poultry have established that the expected dietary burden from crops treated with diflufenzopyr will not result in quantifiable residues above the limits of the standard analytical method.

B. Toxicological Profile

1. *Acute toxicity*. Acute toxicology studies place technical-grade diflufenzopyr in Toxicity Category III or IV for all routes of exposure. It is not a dermal sensitizer.

i. *Acute oral toxicity (rat)*. LD_{50} = >5,000 milligrams/kilogram (mg/kg) in males and females.Toxicity Category IV.

ii. *Acute dermal toxicity (rabbit)*. LD_{50} = >5,000 mg/kg in males and females. Toxicity Category IV.

iii. *Acute inhalation toxicity (rat)*. LC_{50} = >3.14 mg/L in males and females. Toxicity Category IV.

iv. *Primary eye irritation (rabbit)*. Diflufenzopyr is minimally irritating. Toxicity Category III.

v. *Primary dermal irritation (rabbit)*. Diflufenzopyr is not a dermal irritant. Toxicity Category IV.

vi. *Dermal sensitization (guinea pig)*. Diflufenzopyr is not a dermal sensitizer.

2. *Genotoxicty*. Diflufenzopyr shows no signs of being genotoxic—i. In a microbial mutagenicity assay, *Salmonella typhimurium* strains TA98, TA100, TA1,535, TA1,537, and TA1,538 were exposed to diflufenzopyr (97.1%) in DMSO at concentrations of 333, 667, 1,000, 3,330, 6,670, and 10,000 microgram/plate in the presence and absence of mammalian metabolic activation. Diflufenzopyr (97.1%) was tested to twice the limit concentration of 5,000 microgram/plate and cytotoxicity was observed at 6,670 and 10,000 microgram/plate in the absence of activation (-S9) but not in its presence (+S9). The positive controls induced the appropriate responses in the corresponding strains. There was no evidence that the test article induced mutant colonies over background.

ii. In a mammalian cell gene mutation assay at the *thymidine kinase* locus, heterozygous L5178Y (TK +/-) mouse lymphoma cells cultured *in vitro* were exposed in independent repeat assays to diflufenzopyr technical (97.1% active ingredient) in dimethyl sulfoxide at dose levels ranging from 0.05 to 3.0 mg/mL (50 to 3,000 microgram/mL) in the presence and absence of S9 mammalian metabolic activation in the first trial, and 0.05 to 2.0 mg/mL (50 to 2,000 microgram/mL) in the second. Diflufenzopyr was tested up to cytotoxic dose levels and mutation frequencies were determined for dose levels selected on the basis of relative growth. Although initially declared positive by the then study director, application of more recent criteria for mutagenic responses has rendered the test article negative for forward gene mutation at the *thymidine kinase* locus in mouse L5178Y cells in the presence and absence of S9 activation. The positive controls induced the appropriate responses.

iii. In an *in vivo* mouse bone marrow micronucleus assay, groups of 15 male and female ICR mice were dosed by oral gavage with diflufenzopyr (technical, 97.1%) in corn oil at 500, 1,667, and 5,000 mg/kg. Bone marrow cells were harvested at 24, 48, or 72 hours and scored for micronucleated polychromatic erythrocytes (MPCEs). No mortalities or adverse clinical signs were observed at any dose including the limit dose of 5,000 mg/kg, and there were no changes in the PCE/NCE ratios (an indirect measure of cytotoxicity). The positive control induced significant increases in MPCEs, also in the absence of any target cell cytotoxicity. No significant increase in the frequency of MPCEs in bone marrow cells after any treatment time were recorded; therefore, the test article is considered negative in this micronucleus assay.

iv. In an unscheduled DNA synthesis (UDS) assay, primary rat hepatocyte cultures were exposed to diflufenzopyr (97.1% active ingredient) in dimethylsulfoxide (DMSO) at 15 concentrations ranging from 0.0250 to 1,000 microgram/mL in the presence of 10 microCi/mL (42 Ci/mmole) for approximately 19 hours. Mutagenicity, as measured by UDS, was determined for 6 concentrations selected on the basis of cytotoxicity. The concentrations selected were 5.00, 10.0, 25.0, 50.0, 100, and 250 microgram/mL. The highest concentration selected for UDS evaluation, 250 microgram/mL, was moderately toxic (50.8% survival). There was no evidence that unscheduled DNA synthesis, as determined by radioactive tracer procedures (nuclear silver grain counts) was induced. The positive control induced the appropriate response.

3. *Reproductive and developmental toxicity*—i. In a rat developmental toxicity study, technical diflufenzopyr (98.1% active ingredient) in 0.5% aqueous methyl cellulose was administered by gavage to 25 female Crl: CD BR VAF/Plus (Sprague Dawley) rats/dose at dose levels of 0, 100, 300, or 1,000 mg/kg/day from days 6 through 15 of gestation. The maternal no observed adverse effect level (NOAEL) is 300 mg/kg/day and the maternal lowest observed adverse effect level (LOAEL) is 1,000 mg/kg/day based on decreases in food consumption and weight gain. Developmental effects, characterized as significantly lower fetal body weights (bwts) in males (5%) and skeletal variations, exhibited as incompletely ossified and unossified sternal centra and reduced fetal ossification sites for caudal vertebrae, were observed at 1,000 mg/kg/day. The developmental LOAEL is 1,000 mg/kg/day, based on decreased fetal body weights and skeletal variations. The developmental NOAEL is 300 mg/kg/day.

ii. In a rabbit developmental toxicity study, technical diflufenzopyr (98.1% active ingredient) in 0.5% aqueous methyl cellulose was administered by gavage to 20 female New Zealand White Hra: (NZW)SPF rabbits/dose at dose levels of 0, 30, 100, or 300 mg/kg/day from days 6 through 19 of gestation. The maternal LOAEL is 100 mg/kg/day, based on minimal reductions in body weight gain with no reduction in food consumption and clinical signs of toxicity (abnormal feces). The maternal NOAEL is 30 mg/kg/day. Developmental effects, characterized as significant increases ($p \leq 0.01$) in the incidence of supernumerary thoracic rib pair ossification sites (12.74 vs. 12.54 for controls) occurred at the 300 mg/kg/day dose. No treatment-related developmental effects were noted at the low- or mid-doses. The developmental LOAEL is 300 mg/kg/day based on increased skeletal variations (supernumerary rib ossification sites). The developmental NOAEL is 100 mg/kg/day.

iii. In a 2–generation rat reproduction study, technical diflufenzopyr (98.1% active ingredient) was administered continuously in the diet to 26 Wistar rats/sex/dose at dose levels of 0, 500, 2,000 or 8,000 ppm in the diet (0, 27.3–42.2, 113.1–175.9, or 466.2–742.0 mg/kg/day). The systemic LOAEL is 2,000 ppm (113.1–175.9 mg/kg/day) based on reduced body weight gain, increased food consumption, and increased seminal vesicle weights. The systemic NOAEL is 500 ppm (27.3–42.2 mg/kg/day). The reproductive LOAEL is 8,000 ppm (466.2–742.0 mg/kg/day) based on lower live birth and viability indices, total pre-perinatal loss, reduced body weights and body weight gain during lactation, a higher proportion of runts, and a higher percentage of offspring with no milk in the stomach. The reproductive NOAEL is 2,000 ppm (113.1–175.9 mg/kg/day).

iv. In an acute rat neurotoxicity study, diflufenzopyr (96.4% active ingredient) was administered by gavage to Crl:CD BRR rats (10/sex/group) at dose levels of 0, 125, 500 or 2,000 mg/kg. The rats were evaluated for reactions in functional observations and motor activity measurements at 3 hours, 7 days, and 14 days postdosing. Histopathological evaluation on the brain and peripheral nerves was assessed after day 14. Diflufenzopyr had no definite impact on neurotoxic responses, although a few abnormalities were observed in the functional battery on the day of dosing. A decrease in immediate righting responses that was observed in several males in all treatment groups was not concentration-dependent. Nasal staining was observed in more rats in the 2,000 mg/kg treatment groups (6 males, 3 females), but was not considered a definite or significant response to treatment. Lower mean brain weights in all female treatment groups lacked associated macroscopic and microscopic histopathological changes, and were only 4–5% lower than the control brain weight. There were no definite treatment-related differences in body weights or food consumption in any of the treatment groups. There was no evidence of treatment-related neuropathology in the 2,000 mg/kg treatment group. A LOAEL was not established. The NOAEL for acute neurotoxicity is 2,000 mg/kg (the limit dose).

v. In a subchronic rat neurotoxicity study, diflufenzopyr (96.4% active ingredient) was administered in the diet to Crl: CD BR rats (10/sex/group) at dose levels of 0, 25, 75, or 1,000 mg/kg/day for 13 weeks. The rats were evaluated for reactions in functional observations and motor activity testing at 4 hours and during weeks 4, 8, and 13 of treatment. No treatment-related neurotoxicological effects were observed at any treatment level. A LOAEL for neurotoxicological effects was not established; the NOAEL was 1,000 mg/kg/day for both sexes. Treatment-related toxic effects were observed at the 1,000 mg/kg/day treatment level. The toxicological LOAEL for this study is 1,000 mg/kg/day, based on decreased body weight gains for both sexes. The toxicological NOAEL is 75 milligram/kilogram/day (mg/kg/day).

4. *Subchronic toxicity*—i. In a subchronic feeding study in rats, male and female Wistar rats were fed test diets containing technical diflufenzopyr, purity 96%, at dose levels of 0, 1,000, 5,000, 10,000, and 20,000 ppm (equal to 0, 60.8, 352, 725, and 1,513 mg/kg body weight/day (mg/kg bw/day) for males, and 0, 72.8, 431, 890, and 1,750 mg/kg bwt/day for females) for a period of 13 weeks, 10 rats per sex per group. An additional 10 rats per sex were assigned to the 0 and 20,000 ppm groups for a 4–week recovery period following treatment. The NOAEL was set at 5,000 ppm (equal to 352 mg/kg bwt/day for males, and 431 mg/kg bwt/day for females) based on lower mean body weight gain and decreased food efficiency in the 10,000 and 20,000 ppm groups, both sexes. Additional findings were decreased food intake (20,000 ppm, males only); slight increases in cholesterol (20,000 ppm, both sexes, and 10,000 ppm, males only) and ALAT (10,000 and 20,000 ppm, both sexes); and slightly lower chloride (20,000 ppm, both sexes). Histopathological findings were an increased incidence of foamy macrophages in the lungs in the 10,000 and 20,000 ppm groups, both sexes, and testicular atrophy in the 20,000 ppm group. Following the 47–week recovery period, the only treatment-related effects which showed partial or no evidence of recovery were foamy macrophages in the lungs and testicular atrophy.

ii. In a 13–week feeding study, male and female CD–1 mice were fed test diets containing technical diflufenzopyr, purity 97.1%, at dietary concentrations of 0, 350, 1,750, 3,500, and 7,000 ppm (equal to 0, 58, 287, 613 and 1,225 mg/kg bwt/day for males, and 0, 84, 369, 787 and 1,605 mg/kg bwt/day for females) for a period of 13 weeks, 10 mice per sex per group. The NOAEL was determined to be 7,000 ppm (equal to 1,225 mg/kg bw/day for males and 1,605 mg/kg bw/day for females) since there were no treatment-related effects observed in male or female mice at any dose level tested.

iii. In a subchronic toxicity study in dogs, diflufenzopyr (98% active ingredient) was administered to beagle dogs (4/sex/dose) by feeding at dose levels of 0, 1,500, 10,000, or 30,000 ppm (0, 58, 403, or 1,131 mg/kg/day for males; 0, 59, 424, or 1,172 mg/kg/day for females) for 13 weeks. The lowest adverse effect level LOAEL for this study is 10,000 ppm (403 mg/kg/day in males and 424 mg/kg/day in females), based on the occurrence of erythroid hyperplasia in the bone marrow, extramedullary hemopoiesis in the liver, and hemosiderin deposits in Kupffer cells. The NOAEL is 1,500 ppm (58 mg/kg/day in males and 59 mg/kg/day in females).

iv. In the subchronic rabbit dermal toxicity study, technical diflufenzopyr, purity 96.4%, was moistened with distilled water and administered by dermal application to male and female New Zealand white rabbits, 5/sex/dose, at dose levels of 0, 100, 300, and 1,000 mg/kg bwt per application. Duration of application was 6 hours a day, daily for 21 to 24 consecutive days. The NOAEL for systemic toxicity was determined to be 1,000 mg/kg bwt/day, since there were no apparent signs of treatment-related systemic effects observed in male or female rabbits at any dose level tested. A NOAEL for dermal effects could not be determined since local dermal irritation was observed at all dose levels tested (there were no corresponding findings upon histopathological examination).

5. *Chronic toxicity*—i. In a chronic toxicity study in dogs, diflufenzopyr (98.1% active ingredient) was administered to Beagle dogs (4/sex/dose) by feeding at dose levels of 0, 750, 7,500, or 15,000 ppm (0, 26, 299, or 529 mg/kg/day for males; 0, 28, 301, or 538 mg/kg/day for females) for 52 weeks. The LOAEL for this study is 7,500 ppm (299 mg/kg/day for males and 301 mg/kg/day for females), based on erythroid hyperplasia in the bone marrow in bone sections, reticulocytosis, and increased hemosiderin deposits in the liver, kidneys, and spleen. The NOAEL is 750 ppm (26 mg/kg/day for males and 28 mg/kg/day for females).

ii. In a mouse carcinogenicity study, male and female CD–1 mice were fed test diets containing technical diflufenzopyr, purity 98.1%, at dietary concentrations of 0, 700, 3,500 and 7,000 ppm (equal to 0, 100, 517, and 1,037 mg/kg bwt/day for males, and 0, 98, 500, and 1,004 mg/kg bwt/day for females), 60 mice per sex per group, for a period of 78 weeks. The NOAEL for systemic toxicity was determined to be

7,000 ppm (equal to 1,037 mg/kg bwt/day for males and 1,004 mg/kg bwt/day for females). There were no treatment-related effects observed at any dose level tested in male rats. There was a slight, but statistically significantly lower mean overall body weight gain for females in the 7,000 ppm group, due primarily to decreased gain/increased weight loss during the second year of the study. In the absence of any other treatment-related findings, this was not considered to be an adverse, toxicologically significant finding. There was no evidence of carcinogenic potential of diflufenzopyr for male or female mice at any dose level tested.

iii. In a combined chronic toxicity/carcinogenicity study, male and female Wistar rats were fed test diets containing technical diflufenzopyr, purity 97.1% to 99.6%, at dietary concentrations of 0, 500, 1,500, 5,000, and 10,000 ppm (equal to 0, 22, 69, 236, and 518 mg/kg bwt/day for males, and 0, 29, 93, 323, and 697 mg/kg bwt/day for females), 72 rats per sex per group, for a period of 104 weeks. The NOAEL for systemic toxicity was set at 5,000 ppm (equal to 236 mg/kg bwt/day for males and 323 mg/kg bwt/day for females). Treatment-related effects in the 10,000 ppm group were significantly lower body weight and body weight gains throughout the study period and decreased food efficiency. There was no evidence of carcinogenic potential of diflufenzopyr at any dose level tested. The incidences of benign and malignant tumors were comparable between control and treated groups.

6. *Animal metabolism*. In rats, goats, and hens the majority (greater than 90%) of diflufenzopyr was excreted. In the ruminant, major metabolites include M1, M5 (6-((3,5-difluorophenylcarbamoyl-8-methyl-pyrido[2,3-d]-5-pyridazinone) and M19 (8-hydroxymethylpyrido[2,3-d]pyridazine-2,5(1H,6H)-dione. In poultry, diflufenzopyr was not detected, and M1 was the only significant metabolite identified, and in egg white only. Transfer of secondary residues to livestock is not expected.

7. *Metabolite toxicology*. Toxicity of the metabolites of diflufenzopyr to humans is concurrently evaluated during toxicity testing because both plant and animal metabolites are formed during the course of toxicity tests. Both plant and animal major metabolites are considered not of toxicological concern and have been identified in the rat metabolism study.

8. *Endocrine disruption*. No specific tests have been conducted with diflufenzopyr to determine whether this active ingredient may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, chronic, lifespan, and multigenerational bioassays in mammals and acute aquatic organisms and wildlife did not reveal endocrine effects. It is expected that these studies would reveal endocrine disrupting activity of this active ingredient if it existed.

C. Aggregate Exposure

1. *Dietary exposure*. EPA has established the reference dose (RfD) for diflufenzopyr at 0.26 milligrams/kilogram/day (mg/kg/day). This RfD is based on bone marrow compensated hemolytic anemia observed in the 1–year dog feeding study with a NOAEL of 26 mg/kg/day and an uncertainty factor of 100.

Cancer classification and risk assessment. Based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential, diflufenzopyr has been characterized as ''not likely'' to be a human carcinogen.

i. *Food—chronic dietary exposure*. A chronic dietary risk assessment was performed for diflufenzopyr and its metabolites characterized as M1. The analysis used the RfD of 0.26 mg/kg bwt/day and assumed that 100% of corn-derived foods contain residues at the tolerance level (0.05 ppm). These assumptions result in a theoretical maximum residue contribution (TMRC) that is less than or equal to 0.1% of the RfD for the overall U.S. population (48 states) and all population subgroups.

ii. *Drinking water*. There are no established maximum contaminant levels or health advisory levels for residues of diflufenzopyr or its metabolites in drinking water. EPA used the screening concentration in ground water (SCI-GROW) model to estimate residues of diflufenzopyr in ground water and the generic expected environmental concentration (GENEEC) model to estimate diflufenzopyr residue levels in surface water. Estimated maximum concentrations of diflufenzopyr in surface and ground water are 3.80 parts per billion (ppb) and 0.006 ppb, respectively. The estimated maximum concentrations in water are less than EPA's level of comparison (29,970 ppb) for diflufenzopyr residues in drinking water as a contribution to acute aggregate exposure. Therefore, taking into account the uses proposed in this action, BASF Corporation concludes with reasonable certainty that residues of diflufenzopyr in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time.

iii. *Acute exposure and risk*. An acute dietary risk assessment was performed for diflufenzopyr and its metabolites. The analysis was conducted using the acute RfD of 1.0 mg/kg/day, based on developmental findings (increased skeletal variations) observed in the rabbit developmental study. For the population subgroup of concern, females 13 years and older, the estimated 95th percentile of exposure is equal to 0.01% of the acute RfD. The analysis is conservative since it assumes that 100% of corn-derived foods contain residues at the tolerance level (0.05 ppm).

iv. *Chronic exposure and risk*. Using TMRC exposure assumptions, EPA has concluded that aggregate exposure to diflufenzopyr from food will utilize less than 0.1% of the RfD for the U.S. population. Despite the potential for exposure to diflufenzopyr in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. BASF Corporation concludes that there is a reasonable certainty that no harm will result from aggregate exposure to diflufenzopyr residues.

2. *Non-dietary exposure*. There are no registered or proposed residential uses for diflufenzopyr.

D. Cumulative Effects

EPA does not have, at this time, available data to determine whether diflufenzopyr has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, diflufenzopyr does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, BASF Corporation has not assumed that diflufenzopyr has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*. Using TMRC exposure assumptions EPA has concluded that aggregate exposure to diflufenzopyr from food will utilize less than 0.1% of the RfD for the U.S. population.

2. *Infants and children*. There is a complete toxicity data base for diflufenzopyr and exposure data are

complete or are estimated based on data that reasonably account for potential exposures. Taking into account the completeness of the data base and the toxicity data regarding prenatal and postnatal sensitivity, BASF Corporation concludes, based on reliable data, that use of the standard margin of safety will be safe for infants and children without addition of another ten-fold factor. Using the standard exposure assumptions EPA has concluded that aggregate exposure to diflufenzopyr from food will utilize 0.1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to diflufenzopyr in drinking water, BASF Corporation does not expect the aggregate exposure to exceed 100% of the RfD. Based on these risk assessments, BASF Corporation concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to diflufenzopyr residues.

F. International Tolerances

There are no CODEX or Mexican residue limits established for diflufenzopyr or its metabolites.

[FR Doc. 01–30595 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7117–3]

Regional Haze Regulations; Availability of Draft Guidance Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: We, the EPA are announcing today the availability of draft guidance to assist State and tribal air pollution control agencies in the implementation of regulations governing regional haze which were published in the **Federal Register** on July 1, 1999. These draft documents address the establishment of natural visibility conditions and the tracking of progress under the regional haze program.

DATES: Comments should be submitted on or before January 11, 2002.

ADDRESSES: Comments should be submitted to Lara Autry, U.S. Environmental Protection Agency (MD–14), Research Triangle Park, NC 27711; E-mail *autry.lara@epa.gov.* An electronic copy of the draft guidance can be accessed at: *http://www.epa.gov/ttn/amtic/visinfo.html.*

FOR FURTHER INFORMATION CONTACT: Lara Autry at the same address; E-mail *autry.lara@epa.gov;* telephone (919) 541–5544.

SUPPLEMENTARY INFORMATION: In section 169A of the 1977 Amendments to the Clean Air Act, Congress established a national visibility goal as the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Federal Class I areas which impairment results from manmade air pollution.'' 42 U.S.C. 7491. These provisions were further supplemented by section 169B of the Clean Air Act Amendments of 1990. 42 U.S.C. 7492. States are required to develop implementation plans that make ''reasonable progress'' toward this goal.

EPA issued initial visibility regulations in 1980 [1] that addressed visibility impairment in a specific mandatory Federal Class I area that is determined to be ''reasonably attributable'' to a single source or small group of sources. Regulations to address regional haze were deferred until improved techniques could be developed in monitoring, modeling, and in understanding the effects of specific pollutants on visibility impairment. EPA issued regional haze regulations in 1999.[2]

The overall framework of the regional haze rule requires States to develop SIPs that include (1) reasonable progress goals for improving visibility in each mandatory Federal Class I area, and (2) set of emission reduction measures to meet these goals. Specifically, States will set progress goals for each mandatory Federal Class I area to:

- provide for an improvement in visibility for the 20% most impaired (i.e., worst visibility) days over the period of the implementation plan, and
- ensure no degradation in visibility for the 20% least impaired (i.e., best visibility) days over the same period.

Baseline visibility conditions for the 20% worst and 20% best days are to be determined using monitoring data collected during calendar years 2000–2004. Baseline conditions for 2000–2004, progress goals, and tracking changes over time are to be expressed in terms of the deciview index.[3]

Most States (and Tribes as appropriate [4]) participating in regional planning organizations will submit regional haze implementation plans, including estimates of natural conditions and proposed progress goals, in the 2008 time frame. The regional haze SIP deadlines are linked to the dates when $PM_{2.5}$ designations are finalized. For states that choose to participate in a regional planning organization, the initial (committal) SIP is due within one year of the $PM_{2.5}$ designation and the full control strategy SIP is due within three years of the $PM_{2.5}$ designation, but not later than December 31, 2008. For states that choose not to participate in a regional planning organization, regional haze SIPs are due within one year of the $PM_{2.5}$ designation (for geographic areas designated as attainment or unclassifiable) and within three years of the $PM_{2.5}$ designation (for geographic areas designated as nonattainment), which is the same time that control strategies to attain the $PM_{2.5}$ standard are due. In developing any progress goal, the State will need to analyze and consider in its set of options the rate of improvement between 2004 (when 2000–2004 baseline conditions are set) and 2018 that, if maintained in subsequent implementation periods, would result in achieving estimated natural conditions in 2064.

The purpose of the draft documents announced in today's notice, when completed, will be to provide guidance to the States in implementing the regional haze program and to explain how EPA intends to exercise its discretion in implementing Clean Air Act provisions and EPA regulations concerning the estimation of natural visibility under the Regional Haze program. The guidance is designed to implement national policy on these issues. Sections 169A and 169B of the Clean Air Act and implementing regulations at 40 CFR 51.308 and 51.309 contain legally binding requirements. When completed and issued, these draft guidance documents will not substitute for those provisions or regulations, nor will they constitute regulations themselves. Thus, they will not impose binding, enforceable requirements on any party, and may not apply to a particular situation based upon the circumstances. We and State decision

[1] See 45 FR 80084 (December 2, 1980).

[2] See 64 FR 35713 (July 1, 1999). See also 40 CFR 51.300–51.309.

[3] The deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in visual perception across the entire range of conditions, from pristine to highly impaired. Deciview = 10 $\ln(b_{ext}/10)$.

[4] Under the Tribal Air Rule (63 FR 7254; February 12, 1998; 40 CFR part 49), Tribal governments may elect to implement air programs in much the same way as states, including development of Tribal implementation plans.

makers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate. Any decisions by us regarding a particular State implementation plan (SIP) demonstration will only be made based on the statute and regulations. Therefore, you are free to raise questions and objections about the appropriateness of the application of this guidance to a particular situation; we will, and States should, consider whether or not the recommendations in this guidance are appropriate in that situation. These guidance documents will be living documents and may be revised periodically without public notice. We welcome public comments on these documents at any time and will consider those comments in any future revision of these guidance documents. However, for the purposes of completing the current versions of these documents and providing them to the State and tribal air pollution control agencies for their use, we ask that any comments on these versions be submitted to us not later than January 11, 2002.

Dated: November 28, 2001.

William Lamason,

Acting Director, Emissions Monitoring Analysis Division.

[FR Doc. 01–30741 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7116–9]

Proposed CERCLA 122(h) Administrative Agreement for Collection of Past Costs

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: USEPA is proposing to execute an Administrative Agreement (Agreement) under section 122 of CERCLA for collection of a percentage of past response costs at the SCD Chemical Superfund Site. The Settling Party, the Bankruptcy Trustee for the bankruptcy estate of the owner of the property upon which the Superfund Site is located, has agreed, to pay 50% of the net proceeds of sale of the Site property (after payment of the real estate broker's commission, transfer taxes, and closing costs, and liens, such as real property taxes). The property was sold for $150,000 and the proposed distribution to EPA from the sale has been determined by the parties to be 39,768.63. The Settling Party would receive an agreement to make no further claim against the Debtor's estate for its response costs, except for the proposed distribution from the proceeds of the sale of the Subject Property. USEPA today is proposing to execute this Agreement because it provides reimbursement to USEPA for part of its past costs at the SCD Chemical Site.

DATES: Comments on this proposed settlement must be received by January 11, 2002.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Ms. Cheryl Allen at (312) 353–6196 before visiting the Region V Office).

Ms. Cheryl Allen, OPA (P19–J), Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 353–6196.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible)

Ms. Cheryl Allen, Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 353–6196.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Allen, Office of Public Affairs, at (312) 353–6196.

SUPPLEMENTARY INFORMATION: The Site is approximately a 3-acre property with two abandoned industrial buildings and open grounds area and is located at 14100 Fullerton Avenue in Detroit, Michigan (Wayne County). The Site before the Superfund removal action contained approximately 900 55-gallon drums and numerous smaller containers filled with material, including hazardous substances, from the chemical packaging and distribution operation that was located on the Site. All of these materials were removed. Pursuant to the terms of the administrative agreement the Settling Party has agreed to pay 50% of the net proceeds of sale of the Site property (after payment of the real estate broker's commission, transfer taxes, and closing costs, and liens, such as real property taxes) towards past costs associated with investigation and enforcement of CERCLA at the Site. The property was sold for $150,000 and the proposed distribution to EPA from the sale has been determined by the parties to be $39,768.63. The Site is not on the National Priorities List. The Agreement has been executed by the Settling Party. The Settling Party would receive an agreement to make no further claim against the Debtor's estate for its response costs, except for the proposed distribution from the proceeds of the sale of the Subject Property.

A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed Administrative Agreement.

Comments should be sent to Ms. Cheryl Allen of the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

William E. Muno,

Director, Superfund Division, United States Environmental Protection Agency.

[FR Doc. 01–30742 Filed 12–11–01; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

Date and Time: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 13, 2001, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- November 6, 2001 (Open)

B. Reports

- FCS Building Association's Quarterly Report
- Report on Corporate Approvals

- Examination Bulletin: Temporary Relief for Agricultural Producers Under Stress

C. New Business

- Regulation
  - Loan Purchases and Sales 12 CFR Parts 614 and 619 (Final Rule)
- Other
  - Northwest Louisiana PCA Conversion

Closed Session[1]

D. Report

- OSMO Report

Dated: December 10, 2001.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 01–30817 Filed 12–10–01; 2:04 pm]

BILLING CODE 6705–01–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 December 26, 2001.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. William Clayton Vandivort, Sikeston, Missouri; to retain voting shares of Security State Bancshares, Inc., Charleston, Missouri, and thereby indirectly retain voting shares of Bank of Paragould, Paragould, Arkansas, First Security State Bank of Charleston, Charleston, Missouri, and First Security State Bank of Southeast Missouri, Caruthersville, Missouri.

[1] Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Board of Governors of the Federal Reserve System, December 6, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–30668 Filed 12–11–01; 8:45 am]

BILLING CODE 6210–01–S

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, December 12, 2001.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed amendments to Regulation Z (Truth in Lending) addressing concerns related to potentially abusive practices in home mortgage lending. (Proposed earlier for public comment, Docket No. R–1090)

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System,Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 7, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–30778 Filed 12–7–01; 4:38 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 11 a.m., Monday, December 17, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a **RECORDED ANNOUNCEMENT** of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an **ELECTRONIC ANNOUNCEMENT** that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 10, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–30810 Filed 12–10–01; 11:50 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Public Roundtable on Consumer Aspects of Hague Convention on Jurisdiction and Foreign Judgments

AGENCY: Federal Trade Commission.

ACTION: Notice Announcing Public Roundtable.

SUMMARY: The Federal Trade Commission (the "FTC"), in consultation with other government agencies, will hold a roundtable discussion on the consumer aspects of the Proposed Hague Convention on Jurisdiction and Foreign Judgments being negotiated by the Hague Conference on Private International Law. The latest draft of the Convention can be found at *http://www.hcch.net/e/workprog/jdgm.html.*

DATES: The roundtable will be held on Wednesday, December 19, 2001, and will begin at 9:15 a.m.

ADDRESSES: The roundtable will be held at the Federal Trade Commission, Room 432, 600 Pennsylvania Avenue, NW., Washington, DC. Please contact Maneesha Mithal, Bureau of Consumer Protection, Federal Trade Commission, phone: (202)326–2771, facsimile: (202)326–3392, E-mail: *mmithal@ftc.gov* (preferably by E-mail) if you plan to attend.

FOR FURTHER INFORMATION CONTACT: Maneesha Mithal, Bureau of Consumer Protection, Federal Trade Commission, phone: (202)326–2771, facsimile: (202)326–3392, E-mail: *mmithal@ftc.gov.*

SUPPLEMENTARY INFORMATION: Since 1992, the U.S. government has been negotiating an International Jurisdiction and Foreign Judgments Convention through the Hague Conference on Private International Law (the Convention). The State Department is leading the negotiations, assisted by staff of the Department of Justice, the Department of Commerce, the FTC and other agencies.

The Convention would establish international rules on jurisdiction and recognition and enforcement of foreign judgments. In June 2001, the Hague Conference on Private International Law convened what was to be the first session of a two-part conference to finalize the Convention. But because many difficult issues remained unresolved, at the conclusion of the June conference, Hague Conference delegations were unable to decide how to take the negotiations forward. A follow-up meeting has been tentatively scheduled for early 2002 to decide whether to continue the full project, scale it back in some way, or suspend it.

The draft Convention text resulting from the June 2001 negotiations raises many difficult issues, particularly in the area of e-commerce for business-to-consumer (B2C) and business-to-business (B2B) transactions, where stakeholders disagree on appropriate jurisdiction rules.[1] Several suggestions have been made for scaling back the current text in order to achieve consensus on the Convention, including limiting the Convention to enforcement of judgments arising from physical torts and B2B contracts containing choice-of-forum clauses. The U.S. delegation would like to explore with interested stakeholders the possibility of narrowing the Convention to areas where there seems to be consensus.

The FTC is hosting this roundtable as a forum for all interested stakeholders to provide input to U.S. government officials on three specific issues raised by the draft Convention that are particularly relevant to consumer interests: business-to-consumer contracts, informational torts, and physical torts.

Officials from the Department of State, Department of Commerce, and Library of Congress will also be participating in the meeting. Each session of the roundtable will be moderated by government representatives. All attendees are free to participate in the discussion; no particular panelists will be chosen beforehand. An agenda for the roundtable and questions for discussion of these topics are listed below.

9:15: Introductory Remarks

9:30–11:30: Topic 1: Contracts

With respect to contracts, should the Convention be limited to B2B contracts containing choice-of-forum clauses? Why or why not?

If so, how should the term business be defined? What are the concerns of including, for example, non-profit associations and libraries within the definition of business?

If the Convention is limited to B2B contracts containing choice-of-forum clauses, should all such clauses be upheld or should there be exceptions for clauses that are procured as a result of fraud, duress, or unconscionability? Should there be exceptions based on reasonableness or public policy? Why or why not?

A concern has been raised that, even if limited to business-to-business contracts, the Convention could be revised and/or reinterpreted in the future to include consumer contracts also. How can this concern be addressed?

If the Convention were limited to B2B choice-of-forum clauses, U.S. consumers would not be able to get their judgments enforced abroad under the Convention. Are there other international venues where a Convention or other vehicle for enforcement of consumer judgments could be considered? What else can the U.S. do to address this problem?

Should the Convention address all B2B contracts, including those that do not contain choice-of-forum clauses? Why or why not?

Some have suggested that consensus is possible on the issue of jurisdiction for consumer contracts that do not contain choice-of-forum clauses. Should the Convention address consumer contracts without choice-of-forum clauses? What are the advantages and disadvantages of this approach?

11:45–12:30 pm: Topic 2: Physical Torts

Should physical torts (i.e., product liability) be included within the scope of the Convention? If so, how can physical torts be defined?

What are the advantages of inclusion? Disadvantages?

The June 2001 draft of the Convention contains some provisions on damages. If physical torts are included in the Convention, are stakeholders comfortable with the approach to damages outlined in the June 2001 draft of the Convention? Why or why not?

If physical torts are included in the Convention, should the U.S. be willing to give up general doing business jurisdiction in international cases involving physical torts? What impact would this have on U.S. litigation?

12:30–1:30 pm: Lunch

1:30–3:30 pm: Topic 3: Informational Torts (Intellectual Property, Speech Torts)

Should informational torts (e.g., defamation, copyright, trademark, patent infringement) be included within the scope of the Convention? Why or why not?

How can we define informational torts, as opposed to physical torts, for purposes of an international Convention?

Should the Convention distinguish between informational torts involving consumers and businesses? If so, how could such a distinction be made?

Should the Convention distinguish between torts that raise First Amendment issues and other informational torts? If so, how could such a distinction be made?

3:30–5:00 pm: Other Issues/Open Discussion

Should the Convention address lawsuits where the defendant is sued in his or her home forum? Why or why not?

A proposal has been made to negotiate a multi-track Convention, under which a comprehensive Convention would be negotiated, as well as a narrower Convention, and countries could decide which Convention to sign on to. What are your views with respect to this approach?

Do attendees have questions for members of the U.S. delegation?

[1] The latest draft of the Convention can be found at *http://www.hcch.net/e/workprog/jdgm.html.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–30730 Filed 12–11–01; 8:45 am]

BILLING CODE 6750–01–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) and the Assistant Secretary for Health have taken final action in the following case:

Karen M. Ruggiero, Ph.D., Harvard University: On November 26, 2001, the U.S. Public Health Service (PHS) entered into a Voluntary Exclusion Agreement with Harvard University and Karen M. Ruggiero, Ph.D., former Assistant Professor, Department of Psychology at Harvard University. Based on the report of an inquiry conducted by Harvard University (Harvard Report), and related actions and findings by Harvard based on the Harvard Report, as well as additional analysis conducted by ORI in its oversight review, PHS found that Dr. Ruggiero engaged in scientific misconduct by fabricating data in research supported by the National Institutes of Health (NIH).

Specifically, PHS and Harvard University found that:

(1) Dr. Ruggiero fabricated three experiments, including data reported as having been obtained from a total of 240 participants, published in the following paper: Ruggiero, K.M. & Marx, D.M. ''Less pain and more to gain: Why high-status group members blame their failure on discrimination.'' Journal of Personality and Social Psychology, 77(4):774–784, 1999 (the ''JPSP paper''). These experiments were also proposed in the ''Research Plan'' of an application submitted to the National Institute of Mental Health (NIMH), NIH, by Dr. Ruggiero in September 1997 for grant 1 R03 MH58586–01, which was acknowledged as a source of support in the JPSP paper. Dr. Ruggiero admits that she fabricated the data on the 240 participants in the JPSP paper. At her request, a notice of retraction of this paper appeared in the Journal of Personality and Social Psychology 81(2):178, 2001.

(2) Dr. Ruggiero fabricated two experiments, including data reported as having been obtained from a total of 360 participants, published in the following paper: Ruggiero, K.M., Steele, J., Hwang, A., & Marx, D.M. ''Why did I get a ''D''? The effects of social comparisons on women's attributions to discrimination.'' Personality and Social Psychology Bulletin 26(10):1271–1283, 2000 (the ''PSPB paper''). These experiments were also proposed in the ''Research Plan'' of the application submitted by Dr. Ruggiero in September 1997 for grant 1 R03 MH58586–01, which was acknowledged as a source of support in the PSPB paper. Dr. Ruggiero admits that she fabricated the data on the 360 participants in the PSPB paper. At her request, a notice of retraction of this paper appeared in the Personality and Social Psychology Bulletin 27(9):1237, 2001.

(3) Dr. Ruggiero's admittedly fabricated research from the JPSP and PSPB papers was cited in and served as the basis for an NIH Individual National Service Award application, F32 MH12868–01 and –01A1, formerly F32 HD41874, ''Status effects in perceptions of preferential treatment,'' submitted in August 2000 by one of Dr. Ruggiero's post-doctoral fellows, with Dr. Ruggiero listed as the sponsor.

(4) In connection with a Harvard School of Public Health grant application to NIH, 1 R01 HL065220–01, ''Measuring racial discrimination for health research,'' Dr. Ruggiero submitted a subcontract in September 2000 citing the admittedly fabricated research from the JPSP and PSPB papers in support of her qualifications to serve as a subcontractor.

(5) In July 1999 and July 2000, Dr. Ruggiero cited and included as ''Preliminary Studies'' her admittedly fabricated, PHS-supported research from the JPSP and PSPB papers in applications, ''The ironic status effect,'' that she submitted to the National Science Foundation.

The Voluntary Exclusion Agreement (Agreement) states that:

(1) Dr. Ruggiero agreed to exclude herself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 CFR part 76(Debarment Regulations) for a period of five (5) years, beginning on November 26, 2001.

(2) Dr. Ruggiero agreed to exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of five (5) years, beginning on November 26, 2001.

(3) Dr. Ruggiero agreed to submit a letter, with a copy to ORI and Harvard, to the Personality and Social Psychology Bulletin requesting retraction of the following paper: Ruggiero, K.M. & Major, B.N. ''Group status and attributions to discrimination: Are low- or high-status group members more likely to blame their failure on discrimination?'' Personality and Social Psychology Bulletin 24:821–838, 1998. Dr. Ruggiero further agreed that the letter submitted pursuant to this paragraph will state that the retraction is warranted ''because serious questions exist concerning the validity of the data which relate solely to my own work and which do not implicate my coauthor in any way.'' ORI received a copy of her letter to the editor, dated November 5, 2001.

(4) Dr. Ruggiero agreed to submit a letter, with a copy to ORI and Harvard, to Psychological Science requesting a retraction of the following paper: Ruggiero, K.M., Mitchell, J.P., Krieger, N., Marx, D.M., & Lorenzo, M.L. ''Now you see it, now you don't: Explicit versus implicit measures of the personal/group discrimination discrepancy.'' Psychological Science 22:57–67, 2000. Dr. Ruggiero further agreed that the letter submitted pursuant to this paragraph will state that the retraction is warranted ''because I improperly excluded some participants who should have been included in the analyses and that this exclusion affected the reported results. Moreover, the improper exclusion of data was solely my doing and was not contributed to or known by my coauthors.'' ORI received a copy of her letter to the editor, dated October 18, 2001.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, 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. 01–30627 Filed 12–11–01; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices (ACIP) Teleconference.

Time and Date: 3:30 p.m.-5:30 p.m., December 7, 2001.

Place: Teleconference call will originate at the Centers for Disease Control and Prevention in Atlanta, Georgia.

Status: Closed.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: The teleconference will convene in closed session from 3:30 p.m. to 5 p.m. on December 7, 2001. The purpose of this closed session is to discuss the use of anthrax vaccine for persons exposed to B. anthracis in the United States. This teleconference will be closed to the public in accordance with provisions set forth in 5 U.S.C. 552b(c)(1), (7) and (9)(B), and the Determination of the Deputy Director for Management, CDC, pursuant to Pub. L. 92–463.

SUPPLEMENTARY INFORMATION: As provided under 5 U.S.C. 552b(e) and 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register**.

CONTACT PERSON FOR MORE INFORMATION: Gloria A. Kovach, Program Analyst, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE, M/S E61, Atlanta, Georgia 30333. Telephone 404/639–8096.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 6, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–30669 Filed 12–11–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Methodology for Determining If an Increase in a State or Territory's Child Poverty Rate Is the Result of the TANF Program.

OMB No.: 0970–0186.

Description: In accordance with section 413(i) of the Social Security Act and 45 CFR part 284, DHHS intends to extend the following information collection requirements for instances when Census Bureau data show that a State's child poverty rate increased by 5% or more from 1 year to the next: (1) Optional submission of data on child poverty from an independent source; (2) if the increase in the State's child poverty rate is still determined to be 5% or more, an assessment of the impact of the TANF program(s) in the State on the child poverty rate; and (3) if DHHS determines from the assessment and other information that the child poverty rate in the State increased as a result of the TANF program(s) in the State, a corrective action plan.

Respondents: The respondents are the 50 States and the District of Columbia; and when reliable Census Bureau data become available for the Territories, additional respondents will be Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Optional Submission of Data on Child Poverty from an Independent Source	54	1	8	432
Assessment of the Impact of TANF on the Increase in Child Poverty	54	1	120	6,480
Corrective Action Plan	54	1	160	8,640
Estimated Total Annual Burden Hours				15,552

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.

OPM 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 recommencations for the proposed information 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: December 4, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–30732 Filed 12–11–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–89]

Notice of Proposed Information; Collection; Comment Request Employee Interviews/Labor Standards Wage Levels

AGENCY: Office of Departmental Operations and Coordination.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* February 11, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department or Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 800a, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; E-mail *Wayne__Eddins@HUD.gov*; telephone (202) 708–2374 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Record of Employee Interview.

OMB Control Number, if applicable: 2501–0009.

Description of the need for the information and proposed use: HUD and local agency officials administering HUD-assisted programs collect information from project construction workers to ensure wages meet labor standards requirements under the Davis-Bacon and related Acts. Local agencies must retain this informaiton to document to the quantity and quality of local enforcement efforts.

Agency form numbers, if applicable: HUD–11.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Total annual burden for this information collection is estimated at 10,000 hours.

20,000 interview respondents × 0.25 hours = 5,000 hours annually.

Recordkeeping 1,000 × 5 hours = 5,000 hours annually.

Status of the proposed information collection: Reinstatement, no changes.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 4 U.S.C. Chapter 35, as amended.

Dated: December 5, 2001.

Wayne Eddins,

Departmental Records Management Officer.

[FR Doc. 01–30645 Filed 12–11–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: Geological Survey, Interior.

ACTION: Notice of Proposed Cooperative Research & Development Agreement (CRADA) Negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Riverside Technology, Inc. to develop Integrated Science Partnerships that promote Global USGS Mission Objectives.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact Richard J. Calnan, 12201 Sunrise Valley Drive, MS 917, Reston, VA 21092, phone: (703) 648–6206.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the USGS policy requirements stipulated in Survey Manual Chapter 500.20.

Dated: November 8, 2001.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 01–30630 Filed 12–11–01; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: Geological Survey, Interior.

ACTION: Notice of Proposed Cooperative Research & Development Agreement (CRADA) Negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with LaFarge Corporation, Inc. to test a set of geophysical tools for evaluation of alluvial deposits without drilling or trenching.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact Karl Ellefson, PO Box 25046, MS–964, Denver, Colorado 80225, (303) 236–7032.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the USGS requirements stipulated in Survey Manual Chapter 500.20.

Dated: December 6, 2001.

Linda C. Gundersen,

Chief Scientist for Geology.

[FR Doc. 01–30631 Filed 12–11–01; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Quapaw Tribe of Oklahoma Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Quapaw Tribe of Oklahoma Liquor Control Ordinance. The Ordinance regulates the control, possession, and sale of liquor on the Quapaw Tribe trust lands, in conformity with the laws of the State of Oklahoma, where applicable and necessary. Although the Ordinance was adopted on June 22, 2001, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on December 12, 2001.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of the adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Quapaw Tribe of Oklahoma Liquor Control Ordinance, Resolution No. 062201A, was duly adopted by the Quapaw Tribal Business Committee on June 22, 2001. The Quapaw Tribe, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effect among individuals and family members within the Quapaw Tribe.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. 062201A, the Quapaw Tribe of Oklahoma Liquor Control Ordinance was duly adopted by the Quapaw Tribal Business Committee on June 22, 2001.

Dated: December 3, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

The Quapaw Tribe of Oklahoma Liquor Control Ordinance reads as follows:

Liquor Control Ordinance of the Quapaw Tribe of Oklahoma

Article I. Introduction

Section 1. Title. This Ordinance shall be known as the Quapaw Tribe of Oklahoma Liquor Ordinance.

Section 2. Authority. This ordinance is enacted pursuant to the Act of August 15, 1953, 67 stat. 586, codified at 18 U.S.C. 1161, and by section 5 of the Governing Resolution of the Quapaw Tribe of Oklahoma.

Section 3. Purpose. The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Quapaw Tribe of Oklahoma Trust Land. The enactment of a tribal ordinance governing liquor possession and sale on the Quapaw Tribe of Oklahoma Trust land will increase the ability of the tribal government to control the sale, distribution and possession of liquor on Quapaw Tribe of Oklahoma Trust Land and will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Section 4. Effective Date. This ordinance shall be effective on certification by the Secretary of the Interior and its publication in the **Federal Register**.

Section 5. Declaration of Public Policy and Purpose.

(a) The introduction, possession, and sale of liquor on the Quapaw Tribe of Oklahoma Trust Land is a matter of special concern to the Quapaw Tribe of Oklahoma.

(b) Federal Law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. 1154), except as provided therein and expressly delegates to the tribes the decision regarding when and to what extent liquor transactions shall be permitted. (18 U.S.C. 1161).

(c) The Quapaw Tribe of Oklahoma finds that a complete ban on liquor within the Quapaw Tribe of Oklahoma Trust Land is ineffective and unrealistic. However, it recognizes that a need still exists for strict regulation and control over liquor transactions within the Quapaw Tribe of Oklahoma Trust Land, because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution, and consumption of liquor. The Quapaw Tribe of Oklahoma finds that exclusive tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of tribal members, and to address specific concerns relating to alcohol use on the Quapaw Tribe of Oklahoma Trust Land.

(d) It is in the best interests of the Tribe to enact a tribal ordinance governing liquor sales on the tribal lands and which provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of the Quapaw Tribe of Oklahoma Trust Land. Further, the Tribe has determined that said purchase, distribution, and sale shall take place only at tribally-owned enterprises and /or tribally licensed establishments operating on land leased from or otherwise owned by the Tribe.

Article II. Definitions

As used in the title, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) *Alcohol.* That substance known as ethyl alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

(b) *Alcoholic Beverage.* A term synonymous with the term liquor as defined in Article II(f) of this chapter.

(c) *Bar.* Any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

(d) *Beer.* Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

(e) *Business Committee.* The Quapaw Tribal Business Committee.

(f) *Liquor.* Includes all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contains more than one half of one percent of alcohol.

(g) *Liquor Store.* Any store at which liquor is sold and, for the purpose of this ordinance, including stores only a portion of which are devoted to sale of liquor or beer.

(h) *Malt Liquor.* Includes beer, strong beer, ale, stout and porter.

(i) *Package.* Any container or receptacle used for holding liquor.

(j) *Public Place.* Includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purpose of this ordinance, Public Place shall also include any establishment other than a

single family home which is designed for or may be used by more than just the owner of the establishment.

(k) *Quapaw Tribal Council.* The general council of the Quapaw Tribe of Oklahoma which is composed of the voting membership of the Tribe.

(l) *Quapaw Tribe of Oklahoma Trust Land.* Those lands which are held in trust by the United States for the Quapaw Tribe and not for any individual Indian.

(m) *Sale and Sell.* Includes exchange, barter and traffic; and also includes the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(n) *Spirits.* Any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(o) *Wine.* Any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

Article III. Powers of Enforcement

Section 1. The Business Committee. In furtherance of this ordinance, the Business Committee shall have the following powers and duties to:

(a) Publish and enforce rules and regulations adopted by the Business Committee governing the sale, manufacture, distribution, and possession of alcoholic beverages on the Quapaw Tribe of Oklahoma Trust Land;

(b) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Business Committee to perform its functions. Such employees shall be tribal employees;

(c) Issue licenses permitting the sale or manufacture or distribution of liquor on the Quapaw Tribe of Oklahoma Trust Land;

(d) Hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;

(e) Bring suit in the appropriate court to enforce this ordinance as necessary;

(f) Determine and seek damages for violation of the ordinance;

(g) Make such reports as may be required by the Quapaw Tribal Council; and

(h) Collect taxes and fees levied or set by the Business Committee and to keep accurate records, books and accounts.

Section 2. Limitation on Powers. In the exercise of its powers and duties under this ordinance, the Business Committee and its individual members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor or from any licensee;

(b) Waive the immunity of the Quapaw Tribe from suit without the express consent of the Business Committee.

Section 3. Inspection Rights. The premises on which liquor is sold or distributed shall be open for inspection by the Business Committee at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Business Committee and this ordinance are being complied with.

Article IV. Sales of Liquor

Section 1. License Required. Sales of liquor and alcoholic beverages within the exterior boundaries of Quapaw Tribe of Oklahoma Trust Land may only be made at businesses which hold a Quapaw Liquor License.

Section 2. Sales for Cash. All liquor sales within the Quapaw Tribe of Oklahoma Trust Land boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that the provision does not prevent the payment for purchases with the use of credit cards such as Visa, MasterCard, American Express, etc.

Section 3. Sale for Personal Consumption. All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Quapaw Tribe of Oklahoma Trust Land is prohibited. Any person who is not licensed pursuant to this ordinance who purchases an alcoholic beverage within the boundaries of the Quapaw Tribe of Oklahoma Trust Land and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Quapaw Tribe as set forth herein.

Article V. Licensing

Section 1. Procedure. In order to control the proliferation of establishments on the Quapaw Tribe of Oklahoma Trust Land which sell or serve liquor by the bottle or by the drink, all persons or entities which desire to sell liquor within the exterior boundaries of the Quapaw Tribe of Oklahoma Trust Land must apply to the Quapaw Tribe for a license to sell or serve liquor.

Section 2. Application. Any person or entity applying for a license to sell or serve liquor on the Quapaw Tribe of Oklahoma Trust Land must fill in the application provided for this purpose by the Quapaw Tribe and pay such application fees as may be set from time to time by the Business Committee for this purpose. Said application must be filled out completely in order to be considered.

Section 3. Issuance of License. The Business Committee may issue a license if it believes that such issuance is in the best interests of the Quapaw Tribe and its members.

Section 4. Period of License. Each license may be issued for a period not to exceed (2) two years from the date of issuance.

Section 5. Renewal of License. A licensee may renew its license if the licensee has complied in full with this ordinance provided however, that the Business Committee may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the Quapaw Tribe.

Section 6. Revocation of License. The Business Committee may revoke a license for reasonable cause upon notice of hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

Section 7. Transferability of Licenses. Licenses issued by the Business Committee shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Article VI. Taxes

Section 1. Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of liquor or alcoholic beverage on the Quapaw Tribe of Oklahoma Trust Land in the amount of one percent (1%) of the retail sales price. All taxes from the sale of liquor and alcoholic beverages on the Quapaw Tribe of Oklahoma Trust Land shall be paid over to the General Treasury of the Quapaw Tribe.

Section 2. Taxes Due. All taxes for the sale of liquor and alcoholic beverages on the Quapaw Tribe of Oklahoma Trust Land are due on the 15th day of the month following the end of the calendar quarter for which the taxes are due.

Section 3. Delinquent Taxes. Past due taxes shall accrue interest at 2% per month.

Section 4. Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

Section 5. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its book and records relating to the sale of liquor and alcoholic beverages on the Quapaw Tribe of Oklahoma Trust Land. Said review or audit may be done periodically by the Tribe through its agents or employees whenever, in the opinion of the Business Committee, such a review or audit is necessary to verify the accuracy of reports.

Article VII. Rules, Regulations and Enforcement

Section 1. In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

Section 2. Any person who shall sell or offer for sale or distribute or transport in any manner, liquor in violation of this ordinance, or who shall operate or shall have liquor for sale in his possession without a license, shall be guilty of a violation of this ordinance subjecting him or her to civil damages assessed by the Business Committee.

Section 3. Any person within the boundaries of the Quapaw Tribe of Oklahoma Trust Land who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this ordinance.

Section 4. Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this title, shall be guilty of a violation of this ordinance.

Section 5. Any person who knowingly sells liquor to a person under the influence of liquor shall be guilty of a violation of this ordinance.

Section 6. Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this ordinance.

Section 7. No person under the age of 21 years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.

Section 8. Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each such sale or drink provided.

Section 9. Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this ordinance.

Section 10. Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this ordinance.

Section 11. Any person guilty of a violation of this ordinance shall be liable to pay the Quapaw Tribe of Oklahoma the amount of $500 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance.

Section 12. When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

(1) Driver's license or identification card issued by any state department of motor vehicles;

(2) United States Active Duty Military; or

(3) Passport.

Section 13. Liquor which is possessed, including for sale, contrary to the terms of this ordinance are declared to be contraband. Any tribal agent, employee or officer who is authorized by the Business Committee to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the preservation of impounded property.

Section 14. Upon being found in violation of the ordinance, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Quapaw Tribe of Oklahoma.

Article VIII. Abatement

Section 1. Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared to be a nuisance.

Section 2. The Chairman of the Business Committee or, if the Chairman fails or refuses to do so, by a majority vote, the Business Committee shall institute and maintain an action in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this article. In addition to all other remedies at tribal law, the Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less that $25,000 payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provisions of this ordinance or of any other applicable tribal law and that he will pay all fines, costs and damages assessed against him for any violation of this ordinance or other tribal liquor laws. If any conditions of the bond be violated, the bond may be recovered for the use of the Tribe.

Section 3. In all cases where any person has been found in violation of this ordinance relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the ordinance and violation of this ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Article IX. Revenue

Revenue provided for under this ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this ordinance. Excess funds shall be subject to appropriation by the Business Committee for essential governmental and social services.

Article X. Severability and Effective Date

Section 1. If any provision or application of this ordinance is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this ordinance or to render such provisions inapplicable to other persons or circumstances.

Section 2. This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

Section 3. Any and all prior enactments of the Business Committee which are inconsistent with the provisions of this ordinance are hereby rescinded.

Article XI. Amendment

This ordinance may only be amended by a vote of the Business Committee.

[FR Doc. 01–30661 Filed 12–11–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–FES–01–40]

Potholes Reservoir Resource Management Plan, Grant County, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Potholes Reservoir Resource Management Plan (RMP) final environmental impact statement (FEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a final environmental impact statement to document the analysis of four alternatives, including the No Action Alternative, for resource management in the Potholes Reservoir Study area. The alternatives respond differently to the issues and concerns identified during project planning. The Preferred Alternative balances the management agencies' and public's long-term vision for Potholes Reservoir and recognizes the need to protect the natural and cultural environment while supporting the overall recreational interest of the visitors. The Preferred Alternative was modified from that in the Draft EIS to incorporate changes resulting from public comments. The major change was to leave a portion of the Yellow Zone open to seasonal Off-Road Vehicle (ORV) use, instead of closing the entire Yellow Zone to such use year-round. The Preferred Alternative was modified to close 919 acres of the 1,459 acre Lower Crab Creek Arm Management Area (Yellow Zone) to motor vehicle travel and ORV use year-round, and to maintain as seasonally open (July 1 to October 1) 540 acres of the 1,459 acre Yellow Zone. The FEIS includes all comment letters received on the Draft EIS and Reclamation's responses to those comments, as well as a summary of the comments from the public hearings.

A Record of Decision (ROD) will be completed no sooner than 30 days after the publication of the Environmental Protection Agency's Notice of Availability of the FEIS in the **Federal Register**. The ROD will identify the alternative that will be implemented and will discuss factors leading to the decision.

ADDRESSES: Copies of the FEIS are available for public inspection and review at the following locations:

- Bureau of Reclamation, U.S. Department of the Interior, Room 7455, 18th and C Streets, NW., Washington, DC.
- Bureau of Reclamation, Pacific Northwest Regional Office, 1150 North Curtis Road, Suite 100, Boise, Idaho.
- Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington.
- Bureau of Reclamation, Ephrata Field Office, 32 C Street, Ephrata, Washington.

Internet

The FEIS will also be available on the Internet at *http://www.pn.usbr.gov/.*

FOR FURTHER INFORMATION CONTACT: For information, or to obtain a printed copy or a Summary of the FEIS, contact Mr. Jim Blanchard at (509) 754–0239, extension 226.

SUPPLEMENTARY INFORMATION: The purpose of developing a RMP for Potholes Reservoir is to balance the resource protection and conservation objectives with the rising demand for increased recreation opportunities, visitor facilities, and support services.

Throughout the RMP study process, Reclamation routinely solicited input from the public, agencies, Native Americans, and others with a direct interest in the future management of Potholes Reservoir. Information was diligently gathered through public workshops, interviews with key opinion leaders, and ongoing consultations with local, state and Federal agency personnel. Scoping was initiated in August 1996 with interviews with local chambers of commerce, environmental organizations, local business owners, and sportsman clubs. Initial public scoping meetings were held in Othello and Bellevue, Washington, in September 1996.

Through this early and open scoping process, a wide diversity of RMP issues and concerns were identified. These issues and concerns were summarized in a ''Problem Statement'' and used to develop the range of RMP alternatives evaluated in this FEIS.

A Draft EIS was released on January 26, 2001, for a 60-day review period which was subsequently extended for an additional 30 days due to public requests. Reclamation conducted two hearings on March 13, 2001, at the Midway Learning Center in Moses Lake, Washington, to hear and record public comments. Approximately 150 people attended the hearings. Of those, 29 individuals made statements for the public record. The comments ranged from concern over mosquito and noxious weed problems to personal watercraft control in the study area. Most comments reflected concern about the proposed limitations of ORV use in the Yellow Zone. This was also the major issue identified in the 112 individual letters received commenting on the FEIS, and especially in the five form letters that were submitted by numerous individuals.

Reclamation conducted agency meetings on May 7, 2001, and June 4, 2001, attended by representatives of the U.S. Fish and Wildlife Service, the Washington Department of Fish and Wildlife, and the Grant County Sheriffs Office. The purpose of the meetings was for the administering agencies to consider modifying proposed acreage reduction of the ORV Yellow Zone, based on the comments received at the public hearings. With agreement from the user groups, agencies, and jurisdictional entities, the Preferred Alternative was modified to reflect year-round closure of 919 acres of the 1,459 acre Lower Crab Creek Arm Management Area (Yellow Zone) to motor vehicle travel and ORV use, and to maintain 540 acres of the 1,459 acre Yellow Zone as seasonally open (July 1 to October 1).

Dated: November 19, 2001.

J. William McDonald,

Regional Director, Pacific Northwest Region.

[FR Doc. 01–30667 Filed 12–11–01; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

United States Parole Commission; An additional item added to the agenda of the open meeting held at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Correction.

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b].

AGENCY: Department of Justice, United States Parole Commission.

ACTION: Notice of correction of previous published agenda.

SUMMARY: This notice corrects the agenda previously published in the **Federal Register** December 5, 2001 [66 FR 63260] by adding an additional item to the open meeting of the Commission held in Chevy Chase, Maryland. The following item has been added to the agenda: Approval of Rules and Procedures Memorandum concerning hearing examiner authority to make a probable cause finding and determine location of a revocation hearing and witnesses; instructions for handling warrant requests; and deletion of inaccurate statement regarding the satisfactory evidence standard.

Dated: December 7, 2001.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 01–30786 Filed 12–10–01; 10:08 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Pursuant To The government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b].

United States Parole Commission; An additional item added to the agenda of the closed meeting held at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Correction.

AGENCY: United States Parole Commission.

ACTION: Notice of correction of previous published agenda.

SUMMARY: This notice corrects the agenda previously published in the **Federal Register** December 5, 2001 [66 FR 63260] by adding an additional item to the closed meeting of the Commission held in Chevy Chase, Maryland. The following item has been added to the agenda: Approval of Examiner Appointment.

Dated: December 7, 2001.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 01–30787 Filed 12–10–01; 10:08 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0011(2002)]

Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to decrease the existing burden-hour estimates for, and to extend OMB approval of, the information-collection requirements of subparts A and B of 29 CFR part 1915.[1] The paperwork requirements specified by subparts A and B ensures that confined and enclosed spaces and other dangerous atmospheres in shipyards are safe for employee entry, and protect shipyard employees from explosive, combustible, and toxic hazards contained in these spaces.

DATES: Submit written comments on or before February 11, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0011(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by subparts A and B of 29 CFR part 1915 is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222, or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov*, and select ''*Information Collection Requests.*''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

In subpart A, paragraph (b) of § 1915.7 (''Competent Person'') specifies that employers must maintain a roster of designated competent persons (for inspecting and testing spaces covered by subpart B), or a statement that a marine chemist will perform these inspections and tests. Under paragraph (d) of this standard, employers must: Ensure that competent persons, marine chemists, and certified industrial hygienists make a record of each inspection and test they perform; post the record near the covered space while work is in progress; and file the record for a specified period. In addition, employers must make the roster or statement, and the inspection and test records, available to designated parties on request. Maintaining the required roster or statement as specified by paragraph (b) assures employees and OSHA that qualified competent persons are performing the inspections and tests. The recordkeeping requirement under paragraph (d) provides important information regarding the inspection and test results; this information allows employers to implement atmospheric controls and other safety procedures to furnish employees with a safe and healthful workplace, and permits employees and OSHA to determine the appropriateness of these controls and procedures.

Subpart B consists of several standards governing employee entry into confined and enclosed spaces and other dangerous atmospheres. These standards require employers to: Warn

[1] Based on its assessment of the paperwork requirements contained in these subparts, the Agency estimates that the total burden hours decreased compared to its previous burden-hour estimate. Under this notice, OSHA is *not* proposing to revise these paperwork requirements in any substantive manner, only to decrease the burden hours imposed by the existing paperwork requirements.

employees not to enter hazardous spaces and other dangerous atmospheres; exchange information regarding hazards, safety rules, and emergency procedures concerning these spaces and atmospheres with other employers whose employees may enter these spaces and atmospheres; post signs prohibiting ignition sources within or near a space that contains bulk quantities of flammable or combustible liquids or gases; ensure that a marine chemist or a U.S. Coast Guard authorized person tests and certifies confined and enclosed spaces and other dangerous atmospheres before performing hot work in these spaces and atmospheres; post this certificate in the immediate vicinity of the hot-work operation while the operation is in progress; and retain the certificate on file for at least three months after completing the operation. These paperwork requirements regulate employee entry into confined and enclosed spaces and other dangerous atmospheres located in shipyards, thereby preventing death or serious injury and illness that may result from employee exposure to the explosive, combustible, and toxic hazards contained in these spaces.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is proposing to decrease the existing burden-hour estimate, and to extend OMB approval of, the collection-of-information requirements specified by subparts A and B. The Agency is proposing to decrease the current burden-hour estimate from 134,993 hours to 134,819 hours, a total decrease of 174 hours.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Subpart A (''General Provisions'') and Subpart B (''Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment'') of 29 CFR part 1915.

OMB Number: 1218–0011.

Affected Public: Business or other for-profit; Federal government; State, local, or tribal governments.

Number of Respondents: 300.

Frequency of Recordkeeping: On occasion; other (daily).

Average Time per Response: Varies from two minutes (.03 hour) to 10 minutes (.17 hour).

Total Annual Hours Requested: 134,819.

Total Annual Costs (O&M): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (62 FR 50017).

Signed at Washington, DC, on December 6th, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–30729 Filed 12–11–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL95–F–1]

Nationally Recognized Testing Laboratories, Proposed Revised Fee Schedule

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice provides the proposed revised schedule of fees to be charged by the Occupational Safety and Health Administration (OSHA) to Nationally Recognized Testing Laboratories (NRTLs). As provided under 29 CFR 1910.7, OSHA charges fees for specific types of services if provides to NRTLs. These services are: Processing applications for the initial recognition of an organization as an NRTL, or for expansion or renewal of an existing NRTL's recognition, and performing audits (post-recognition reviews) of NRTLs to determine whether they continue to meet the requirements for recognition. The fees charged to NRTLs first went into effect on October 1, 2000.

Annually, OSHA reviews the costs to the Government of providing the services to determine whether any changes to the fees are warranted. In this notice, we detail the projected costs of providing those services during calendar year 2002 and the resulting changes in the fees currently being charged. OSHA publishes this notice because it has determined that those changes are warranted.

DATES: The new fees shown in this notice will go into effect on January 1, 2002. Written comments must be received on or before December 27, 2002.

ADDRESSES: Submit written comments concerning this notice to: Docket Office, Docket NRTL95–F–1, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648. Submit request for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities at the above address, or phone (202) 693–2110. Our web page includes information about the NRTL Program (see *http://www.osha-slc.gov/dts/otpca/nrtl/index.html* or see *http://www.osha.gov* and select ''Programs'').

SUPPLEMENTARY INFORMATION:

Notice of Changes in Fees

The Occupational Safety and Health Administration (OSHA) hereby gives notice that it proposes to revise the current fees that the Agency charges to Nationally Recognized Testing Laboratories (NRTLs). OSHA is taking this action as a result of its annual review of the fees, as provided under 29 CFR 1910.7(f). This review has shown that the costs of providing the services covered by the fees have changed sufficiently to warrant revisions to the current Fees Schedule. OSHA promulgated the rule that established the fees on July 31, 2000 (65 FR 46797–46819). The first Fee Schedule, i.e., the fees, went into effect on October 1, 2000. For those unfamiliar with OSHA's Program, we provide a brief overview below.

Many of OSHA's safety standards require equipment or products that are going to be used in the workplace to be tested and certified to help assure they

can be used safety. Products or equipment that have been tested and certified must have a certification mark on them. An employer may rely on the certification mark, which shows the equipment or product has been tested and certified in accordance with OSHA requirements. In order to ensure that the testing and certification is done appropriately, OSHA implemented the NRTL Program. The NRTL Program establishes the criteria that an organization must meet in order to be and remain recognized as an NRTL.

The NRTL Program requirements are set forth under 29 CFR 1910.7, ''Definition and requirements for a nationally recognized testing laboratory.'' To be recognized by OSHA, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of the manufacturers, vendors, and major users of the products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) have effective reporting and complaint handling procedures.

OSHA requires NRTL applicants (i.e., organizations seeking initial recognition as an NRTL) to provide detailed information about their programs, processes and procedures in writing when they apply for initial recognition. OSHA reviews the written information and conducts an on-site assessment to determine whether the organization meets the requirements of 29 CFR 1910.7. OSHA uses a similar process when an NRTL (i.e., an organization already recognized) applies for expansion or renewal of its recognition. In addition, the Agency conducts annual audits to ensure that the recognized laboratories maintain their programs and continue to meet the recognition requirements.

Currently, there are 18 NRTLs operating over 45 recognized sites in the U.S., Canada, Europe, and the Far East.

Program Costs

In preparing the proposed fee schedule presented in this notice, OSHA has evaluated the total resources that it has committed to the NRTL Program overall and has then estimated the costs that are involved solely with the application approval and the periodic review (i.e., audit) functions. It is these costs alone that OSHA seeks to recover through its fees. Personnel costs are the wages, salary, and fringe benefits costs of the staff positions involved and the number of full time equivalent (FTE) personnel devoted to the NRTL approval and review activities. These estimates also include travel and other costs of these activities. The Agency believes these estimates are fair and reasonable.

Based on the total estimated costs and the total estimated FTE, OSHA has calculated an estimated equivalent cost per hour (excluding travel). This equivalent cost per hour includes both the direct and indirect cost per hour for ''direct staff'' members, who are the staff that perform the application, on-site, and legal reviews and the other activities involved in application processing and audits. In Figure 1, direct costs are expenses for direct staff members, and indirect costs are expenses for support and management staff, equipment, and other costs that are involved in the operation of the program. Support and management staff consists of program management and secretarial staff. Equipment and other costs are intended to over items such as computers, telephones, building space, utilities, and supplies, that are necessary or used in performing the services covered by the proposed fees. Although essential to the services provided, these indirect costs are not readily linked to the specific activities involved in application processing and audits and, as explained later, are therefore allocated to the activities based on direct staff costs.

Figure 1 is an itemization of the estimated costs and the equivalent cost per hour calculated. OSHA believes that the costs shown fairly reflect the full cost of providing the services to NRTLs. This figure shows how we calculated the estimated equivalent cost per hour (excluding travel).

FIGURE 1.—CURRENT ESTIMATED ANNUAL COSTS OF NRTL PROGRAM

Cost description	Est. FTE	Aver.cost per FTE (including fringe)	Total est. costs
Direct Staff Costs	4.7	$97,830	$459,800
Travel	na	na	50,000
Indirect Staff & Other Costs	na	na	[1] 73,050
Total Est. Program Costs			582,850
Avg. direct staff cost/hr ($459,800 ÷ 4.7 FTE × 2,080 hours)			47
Equivalent avg. direct staff cost/hr ($532,850 ÷ 4.7 FTE × 2,080 hours) (includes direct & indirect costs)			54.50

[1] This amount consists of $34,800 of indirect staff costs and $38,250 for equipment and other costs.

The use of an ''equivalent average direct staff cost per hour'' measure is a convenient method of allocating indirect costs to each of the services for which OSHA will charge fees. The same result is obtained if direct staff costs are first calculated and then indirect costs are allocated based on the value, i.e., dollar amount, of the direct staff costs, which is an approach that is consistent with Federal accounting standards. To illustrate, assume a direct staff member spends 10 hours on an activity; the direct staff costs would then be calculated as follows:

Direct staff costs = 10 hours × $40/hour = $400

The $40/hour is the direct staff cost/hour amount shown in Figure 1. The indirect costs would be allocated by first calculating the ratio of indirect costs to direct staff costs, again using the costs shown in Figure 1. This ratio would be as follows:

Indirect costs/direct staff costs = $76,300/$352,200 = 0.217

Next, the indirect costs would be calculated based on the $400 estimate of direct staff costs:

Indirect costs = $400 × 0.217 = $87

Finally, the total costs of the activity are calculated:

Total costs = direct staff costs + indirect costs = $400 + $87 = $487

Taking into account the rounding shown in Figure 1, the actual amount calculated would be $490.

After estimating program costs, the Agency then estimated the time it spends on specific activities or functions. These estimates reflect the Agency's actual experience in performing the services covered by the fees. OSHA calculated time estimates for each major service category. These categories are: initial applications, expansion and renewal applications, and audits. OSHA further divided some categories into the major activities performed and estimated the staff time and travel costs for each of these activities. The Agency then calculated the cost of each major activity using the time estimates, the equivalent cost per hour, and the estimate of travel costs. These costs then serve as the basis for the fees later shown in the proposed fee schedule. Examples of the calculations are shown in Figures 2, 3, 4, and 5.

FIGURE 2.—ESTIMATED COSTS FOR INITIAL APPLICATION

Major activity	Average hours	Average cost [1]
Initial Application Review; staff time: (includes review by office and field staff)	80	$4,360
On-Site Assessment—first day:		
Staff time (includes 16 hours preparation, 4 hours travel, 8 hours at site)	28	1,526
Travel		670
Total (per site, per assessor)		2,196
On-Site Assessment—addnl. day:	8	436
Staff time.		
Travel amount (to cover per diem)		70
Total (per site, per assessor)		506
Final Report & **Federal Register** notice; staff time (includes work performed by field staff and office staff)	120	6,540

[1] Average cost for staff time equal average hours × equivalent average direct staff cost/hr ($54.50).

FIGURE 3.—ESTIMATED COST FOR EXPANSION APPLICATION (ADDITIONAL SITE)

Major activity	Average hours	Average cost [1]
Application Review (expansion for site); staff time: (includes review by office and field staff)	16	$870
On-Site Assessment—first day:		
Staff time: (includes 8 hours preparation, 4 hours travel, 8 hours at site)	20	1,090
Travel		670
Total (per site, per assessor)		1,760
On-Site Assessment—addnl. day:		
Staff time	8	436
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		506
Final Report & **Federal Register** notice; staff time: (includes work performed by field staff and office staff)	48	2,616

[1] Average cost for staff time equal average hours × equivalent average direct staff cost/hr ($54.50).

FIGURE 4.—ESTIMATED COSTS FOR RENEWAL OR EXPANSION (OTHER THAN ADDITIONAL SITE) APPLICATION

Major activity	Average hours	Average cost [1]
Application Review (renewal or expansion other than additional site); staff time: (includes review by office and field staff)	2	$109
On-Site Assessment—first day:		
Staff time: (includes 8 hours preparation, 4 hours travel, 8 hours at site)	20	1,090
Travel		670
Total (per site, per assessor)		1,760
On-Site Assessment—addnl. day:		
Staff time	8	436
Travel amount: (to cover per diem)		70
Total (per site, per assessor)		506
Final Report & **Federal Register** notice; staff time: (includes work performed by field staff and office staff, if there is an on-site assessment)	48	2,616
Final Report & **Federal Register** notice; staff time: (includes work performed by field staff and office staff, if there is no on-site assessment)	28	1,526

[1] Average cost for staff time equal average hours × equivalent average direct staff cost/hr ($54.50).

FIGURE 5.—ESTIMATED COSTS FOR ON-SITE AUDIT

Major activity	Average hours	Average cost*
Pre-site Review; staff time: (field staff only)	8	$436
On-Site Audit—first day:		
Staff time: (includes 4 hours travel)	12	654
Travel		670
Total (per site, per assessor)		1,324
Final Report; staff time: (includes work performed by field staff)	16	872
Total costs		[2] 2,632

[1] Average cost for staff time equal average hours × equivalent average direct staff cost/hr ($54.50).
[2] Based on a one day audit. The costs for any additional days are the same as the per-day costs for an assessment.

In deriving the fee amounts shown in the fee schedule, OSHA has generally rounded the costs shown in Figures 2, 3, 4, and 5, up or down, to the nearest $50 or $100 amount.

OSHA believes that the amounts shown in the proposed schedule reflect the Agency's current reasonable estimation of the costs involved for the services rendered to NRTLs. As previously mentioned, OSHA is not attempting to recover the entire cost of the NRTL Program through the proposed fees but only the costs of providing these services.

What Has Changed

The following table shows the major changes that we have made to the fee schedule, comparing the amount of the current fee to the fee in proposed fee schedule shown later in this notice. Following the table, we explain each of the changes.

TABLE OF MAJOR CHANGES TO FEES SCHEDULE

Description of fee	Current fee amount	Proposed fee amount	Change in fee amount (current minus proposed)
Initial Application Fee	$3,900	$4,400	$3,900 – $4,400 = $500 (increase).
Expansion Application Fee (additional site)	1,550	850	$1,550 – $850 = $700 (reduction).
Expansion Application Fee (additional test standards)	1,550	110	$1,550 – $110 = $1,440 (reduction).
Assessment—Initial Application (per site—Submit With Application).	5,900	6,500	$5,900 – $6,500 = $600 (increase).
Review & Evaluation Fee (per 10 standards) (for standards already recognized for NRTLs or not requiring on-site review).	*50	†10	$500 – $10 = $490 per ten standards (reduction).
Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs on-site assessment).	4,300	2,600	$4,300 – $2,600 = $1,700 (reduction).
Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs No on-site assessment).[5]	4,300	1,500	$4,300 – $1,500 = $2,800 (reduction).

* Per standard.
dagger; Per ten standards.

The current Expansion Application Fee was based upon an NRTL submitting an application that included adding a site and a set of standards to its recognition. Many past expansion applications that we had received were so structured, and the fees were estimated on the basis of receiving similar such applications. However, more recently, NRTLs have opted to submit an expansion application covering a limited number of test standards and did not couple this request with an expansion for an additional site. In addition, the current expansion application fee was estimated on the basis of the NRTL submitting documentation to justify its capabilities for performing testing in an area outside its present scope of recognition. However, if the testing falls within its current capabilities, the application consists of a letter listing the test standards for which it is seeking recognition. The review of this letter is similar to the review we perform for a renewal request. If OSHA must review substantial documentation, e.g., if the standard falls outside the NRTL's current testing capabilities, or if OSHA has not previously recognized the standard for any NRTL, the current per standard fee of $50 covers the necessary staff work to grant the expansion request for the particular standard. If on the other hand OSHA must perform minimal review in determining whether to grant the request for a standard, the rate is $10 for every ten or fewer standards. As a result, we have split the expansion application fee essentially into two fees and adjusted the review and evaluation fee to reflect the work involved for the scenarios just described.

As shown in Figure 1 and later in the proposed fee schedule, the hourly cost charged for staff time will be $54.50, or about 11% higher than the hourly rate of $49 in our current fee schedule, which is available on our web site. The $49 was based upon staff salary and fringe and other program costs during 1999, whereas the $54.50 is based upon projected costs during 2002. Therefore, the 11% increase reflects changes that have accumulated over a three year period, or about 3.6% compounded annually, which is consistent with annual salary adjustments provided to Federal employees.

Fee Schedule and Description of Fees

OSHA proposes the following fee schedule:

TABLE A. FEE SCHEDULE—NATIONALLY RECOGNIZED TESTING LABORATORY PROGRAM (NRTL PROGRAM) FEE SCHEDULE (EFFECTIVE JANUARY 1, 2002) [10]

Type of service	Activity or category (fee charged per application unless noted otherwise)	Fee amount
Application Processing	Initial Application Review [1]	$4,400.
	Expansion Application Fee (per additional site) [1]	$850.
	Renewal Application Fee or Expansion (other) Application Fee [1]	$110.
	Assessment—Initial Application (per site—Submit with Application) [2 4].	$6,500.
	Assessment—Initial Application (per person, per site—first day—Billed After Assessment) [2 7 8].	$1,500 + travel expenses.
	Assessment—Expansion or Renewal Application (per person, per site—first day) [3 8].	$1,100 + travel expenses.
	Assessment—each addnl. day (per person, per site) [2 3 8]	$440 + travel expenses.
	Review & Evaluation Fee [5] ($10 per 10 standards if standards already recognized for NRTLs or require minimal review; else $55 per standard).	$10 per 10 standards or $55 per standard.
	Final Report/Register Notice—Initial Application [5]	$6,550.
	Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs on-site assessment) [5].	$2,600.
	Final Report/Register Notice Fee—Renewal or Expansion Application (if OSHA performs No on-site assessment) [5].	$1,500.
Audits	On-site Audit (per person, per site—first day) [6]	$1,950 + travel expenses.
	On site Audit (per person, per site—each addnl. day) [6]	$440 + travel expenses.
	Office Audit (per site) [6]	$440.
Miscellaneous	Supplemental Travel (per site—for sites located outside the 48 contiguous States, including the District of Columbia) [4].	$1,000.
	Late Payment [9]	$55.

Notes to OSHA Fee Schedule for NRTLs

1. Who must pay the Application Review Fees, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay the Initial Application Review fee and include this fee with your initial application. If you are an NRTL and applying for an expansion or renewal of recognition, you must pay the Expansion Application Review fee or Renewal Application Review fee, as appropriate, and include the fee with your expansion or renewal application.

2. What Assessment Fees do you submit for an initial application, and when must they be paid?

If you are applying for initial recognition as an NRTL, you must pay $6,500 for each site for which you wish to obtain recognition, and you must include this amount with your initial application. We base this amount on two assessors performing a three day assessment at each site. After we have completed the assessment work, we will calculate our assessment fee based on the actual staff time and travel costs incurred in performing the assessment. We will calculate this fee at the rate of $1,500 for the first day and $440 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares. We will bill or refund the difference between the amount you pre-pair, $6,500/site, and this fee. We will reflect this difference in the final bill that we will send to you at the time we publish the preliminary **Federal Register** notice announcing the application.

3. What assessment fees do you submit for an expansion or renewal application, and when must they be paid?

If you are an NRTL and applying solely for an expansion or renewal of recognition, you do not submit any assessment fee with your application. If we need to perform an assessment for the expansion or renewal request, we will bill you for the fee after we perform the assessment for the actual staff time and travel costs we incurred in performing the assessment. We will assess this fee at the rate of $1,100 for the first day and $440 for each additional day, plus actual travel expenses, for each assessor. Actual travel expenses are based on government per diem and travel fares.

4. When do I pay the Supplemental Travel fee?

You must include this fee when you submit an initial application for recognition and the site you wish to recognized is located outside the 48 contiguous U.S. states (including the District of Columbia). The current supplemental travel fee is $1,000. We will factor in this prepayment when we bill for the actual costs of the assessment, as described in our note #2 above. See note 7 for possible refund of Assessment fees.

5. When do I pay the Review and Evaluation and the appropriate Final Report/Register Notice fees?

We will bill an applicant or an NRTL for the appropriate fees at the time we publish the preliminary **Federal Register** notice to announce the application. We will bill at the rate of $10 per 10 standards reviewed, or fraction thereof, for those standard and provide appropriate explanation.

6. When do I pay the Audit fee?

We will bill the NRTL for this fee (on-site or office, as deemed necessary) after completion of the audit. We will calculate our fee based on actual staff time and travel costs incurred in performing the audit. We will calculate this fee at the rate of $1,950 for the first day and $440 for each additional day, plus actual travel expenses for each auditor. Actual travel expenses are based on government per diem and travel fares.

7. When and how can I obtain a refund for the fees that I paid?

If you are applying for initial recognition as an NRTL, we will refund the assessment fees that we have collected if you withdraw your application before we have traveled to your site to perform the on-site assessment. We will also credit your account for any amount we owe you if the assessment fees we have collected are greater than the actual costs of the assessment. Other than these two cases, we will not refund or grant credit for

any other fees that are due or that we have collected.

8. What rate does OSHA use to charge for staff time?

OSHA has estimated an equivalent staff cost per hour that it uses for determining the fees that are shown in the Fee Schedule. This hourly rate takes into account the costs for salary, fringe benefits, equipment, supervision and support for each ''direct staff'' member, that is, the staff that perform the main activities identified in the Fee Schedule. The rate is an average of these amounts for each of these direct staff members. The current estimated equivalent staff costs per hour = $54.5.

9. What happens if I do not pay the fees that I am billed?

As explained above, if you are an applicant, we will send you a final bill for the fees at the time we publish the preliminary **Federal Register** notice. If you do not pay the bill by the due date, we will assess the Late Payment fee shown in the Fee Schedule. This late payment fee represents one hour of staff time at the equivalent staff cost per hour (see note 8). If we do not receive payment within 60 days of the bill date, we will cancel your application. As also explained above, if you are an NRTL, we will send you a bill for the audit fee after completion of the audit. If you do not pay the fee by the due date, we will assess the Late Payment Fee shown in the Fee Schedule. If we do not receive payment within 60 days of the bill date, we will publish a **Federal Register** notice stating our intent to revoke recognition.

10. How do I know whether this is the most Current Fee Schedule?

You should contact OSHA's NRTL Program (202–693–2110) or visit the program's web site to determine the effective date of the most current Fee Schedule. Access the site by selecting ''Subject Index'' or ''Programs'' at *www.osha.gov.* Any application processing fees are those in effect on the date you submit your application. Audit fees are those in effect on the date we begin our audit. Any pending application (i.e., an application that OSHA has not yet completed processing) will be subject only to the fees for the activities that OSHA begins on or after the effective date of the initial fee schedule.

The fee schedule shows the current activities for which OSHA plans to charge fees. In evaluating the changes to the fee schedule, OSHA has considered the following: (1) Actual expenditures of the 2001 fiscal year, and (2) estimated costs of the 2002 fiscal year.

The following is a description of the tasks and functions currently covered by each type of fee category, e.g., application fees, and the basis used to charge each fee.

Application Fees: This fee reflects the technical work performed by office and field staff in reviewing application documents to determine whether an applicant submitted complete and adequate information. The application review does not include a review of the test standards requested, which is reflected in the review and evaluation fee. Application fees would be based on average costs per type of application. OSHA uses an average costs since the amount of time spent on the application review does not vary greatly by type of application. This is based on the premise that the number and type of documents submitted will generally be the same for a given type of application. Experience has shown that most applicants follow the application guide that OSHA provides to them.

Assessment Fees: This fee is different for initial and for expansion or renewal applications. It is based on the number of days for staff preparatory and on-site work and related travel. Three types of fees are shown, and each one would be charged per site and per person. The two fees for the first day reflect time for office preparation, time at the applicant's facility, and an amount to cover travel in the 48 contiguous states. A supplemental travel amount (to be included with the fee schedule) is assessed for travel outside this area. These travel amounts are only estimates for purposes of submitting the initial fees. The applicant or NRTL is billed actual expenses, based on government per diem and travel fares. Any difference between actual travel expenses and the travel amounts in the fee schedule are reflected in the final bill or refund sent to the applicant or NRTL.

Similar to the application fee, the office preparation time generally involves the same types of activities. Actual time at the facility may vary, but the staff devote at least a full day for traveling and for performing the on-site work. The fee for the additional day reflects time spent at the facility and an amount for one day's room and board.

Review and Evaluation Fee: This fee is charged per test standard (which is part of an applicant's proposed scope of recognition). The fee reflects the fact that staff time spent in the office review of an application varies mainly in accordance with the number of test standards requested by the applicant. In generally, the fee is based on the estimated time necessary to review test standards to determine whether each one is ''appropriate,'' as defined in 29 CFR 1910.7, and covers equipment for which OSHA mandates certification by an NRTL. The fee also covers time to determine the current designation and status (i.e., active or withdrawn) of a test standard by reviewing current directories of the applicable test standard organization. Furthermore, it includes time spent discussing the results of the application review with the applicant. The actual time spent will vary depending on whether an applicant requests test standards that have previously been approved for other NRTLs. When the review is minimal, these activities take approximately 2 hours for every 10 or fewer standards. When the review is more substantial, the estimated average review time per standard is one hour for each standard, which translates to $55 per standard. Substantial review will occur when the standard has not been previously recognized for any NRTL or when the NRTL is proposing to do testing outside its current scope of recognition.

Final Reports/Register Notice Fees: Each of these fees are charged per application. The fee reflects the staff time to prepare the report of the on-site review (i.e., assessment) of an applicant's or an NRTL facility. The fee also reflects the time spent making the final evaluation of an application, preparing the required **Federal Register** notices, and responding to comments received due to the preliminary finding notice. These fees are based on average costs per type of application, since the type and content of documents prepared are generally the same for each type of applicant. There is a separate fee when OSHA performs no on-site assessment. In these cases, the NRTL Program staff perform an office assessment and prepare a memo to recommend the expansion or renewal.

Audit (Post-Recognition Review) Fees: These fees reflect the time for office preparation, time at the facility and travel, and time to prepare the audit report on the on-site audit. A separate fee is shown for an office audit conducted in lieu of an actual visit. Each fee is per site and does not generally vary for the same reasons described for the assessment fee and because the audit is generally limited to one day. As previously described, the audit fee would include amounts for travel, and similar to assessments, OSHA will bill the NRTL for actual travel expenses.

Miscellaneous Fees: The sample fee schedule only shows the average cost for one full day of staff time. OSHA would use this fee primarily in cases of refunding the assessment fee. OSHA will also charge a fee for late payment

of the annual audit fee. The amount for the late fee is based on 1 hour of staff time.

Proposed Decision

OSHA has performed its annual review of the fees it currently charges to Nationally Recognized Testing Laboratories, as provided under 29 CFR 1910.7(f). Based on this review, OSHA has determined that certain fees warrant change, as detailed in this notice. As a result, OSHA proposes to revise those current fees by adopting the Nationally Recognized Testing Laboratory Program Fees Schedule shown as Table A above, which would become effective on January 1, 2002. As provided in our regulations, this proposed fee schedule would remain in effect until superseded by another fee schedule. OSHA would give the public an opportunity to comment on any future changes to the fees, as we are doing through this notice.

OSHA welcomes public comments, in sufficient detail, as to whether it should adopt the proposed Nationally Recognized Testing Laboratory Program Fees Schedule shown as Table A above. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESS** no later than the last date for comments (see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above (also see **ADDRESS** no later than the last date for comments (also see **DATES** above). You must include your reason(s) for any request for extension. OSHA will limit an extension to 15 days unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review documents related to the establishment of the fees and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL95–F–1, the permanent record of public information on OSHA NRTL Program fees.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend the final version of the NRTL Program Fees Schedule to the Assistant Secretary. The Agency will publish a public notice of its final version of the Fees Schedule in the **Federal Register,** as provided under 29 CFR 1910.7.

Signed at Washington, DC, this 30th day of November, 2001.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 01–30727 Filed 12–11–01; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–10848]

Prohibited Transaction Exemption 2001–46; Grant of Individual Exemption; Bank of America Corporation (BAC)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Bank of America Corporation (BAC), Located in Charlotte, North Carolina

[Prohibited Transaction Exemption 2001–46; Exemption Application No. D–10848]

Exemption

Section I—Exemption for In-Kind Redemption of Assets

The restrictions of section 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply, effective August 1, 2001,[1] to certain in-kind redemptions (the Redemptions) by the NationsBank Cash Balance Plan (the In-house Plan) of shares (the Shares) of proprietary mutual funds (the Portfolios) offered by investment companies for which Bank of America, N.A. (Bank of America) or an affiliate thereof provides investment advisory and other services (the Nations Funds).

This exemption is subject to the following conditions:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than Bank of America and affiliates of Bank of America (Bank of America Affiliates));

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferrable Securities. Notwithstanding the foregoing, Transferrable Securities which are odd lot securities, fractional shares and

[1] BAC anticipates that the Redemptions will take place on or after August 1, 2001 and, for each Portfolio, will be completed in a single transaction on a single day. However, the applicant represents that different Portfolios may effect Redemptions on different dates. As a result, reference to ''the Redemptions'' throughout this proposed exemption shall include all in-kind redemptions of Shares made pursuant to the exemption regardless of whether such redemptions are made on the same day.

accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the In-house Plan receives a pro rata portion of the securities of the Portfolio upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures set forth in Rule 17a-7 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act) (using sources independent of Bank of America and Bank of America Affiliates);

(D) Bank of America, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with any redemption of the Shares;

(E) Prior to a Redemption, Bank of America provides in writing to an independent fiduciary, as such term is defined in section II (an Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to Bank of America, such authorization being terminable at any time prior to the date of the Redemption without penalty to the In-house Plan, and such termination being effectuated by the close of business following the date of receipt by Bank of America of written or electronic notice regarding such termination (unless circumstances beyond the control of Bank of America delay termination for no more than one additional business day);

(G) Before authorizing a Redemption, based on the disclosures provided by the Portfolios to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the In-house Plan, and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties, and that the Redemption is in the best interest of the In-house Plan and its participants and beneficiaries;

(H) Not later than thirty (30) business days after the completion of a Redemption, the relevant Fund will provide to an independent fiduciary acting on behalf of the Plan (the Independent Fiduciary) a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the In-house Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) the identity (and related aggregate dollar value) of each security provided to the In-house Plan pursuant to the Redemption, including each security valued in accordance with Rule 17a-7(b)(4),

(iii) the current market price of each security received by the In-house Plan pursuant to the Redemption, and

(iv) the identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the In-house Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Portfolio at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, a random sampling of the pricing information supplied by Bank of America; and

(K) Each of the In-house Plan's dealings with: the Nations Funds, the investment advisors to the Nations Funds (the Investment Advisers), the principal underwriter for the Nations Funds, or any affiliated person thereof, are on a basis no less favorable to the In-house Plan than dealings between the Nations Funds and other shareholders holding shares of the same class as the Shares;

(L) The Bank maintains, or causes to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Bank of America, the records are lost or destroyed prior to the end of the six-year period, (ii) no party in interest with respect to the In-house Plan other than Bank of America shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by paragraph (M) below.

(M) (1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the In-House Plan or any duly authorized representative of such fiduciary, and (iii) any participant or beneficiary of the In-House Plan or duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraphs (M)(1)(ii) and (iii) shall be authorized to examine trade secrets of Bank of America or the Nations Funds, or commercial or financial information which is privileged or confidential.

Section II—Definitions

For purposes of this exemption,

(A) The term ''affiliate'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) any officer, director, employee, relative, or partner in any such person; and

(3) any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(C) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Portfolio's prospectus and statement of additional information, and other assets belonging to the Portfolio, less the liabilities charged to each such Portfolio, by the number of outstanding shares.

(D) The term ''Independent Fiduciary'' means a fiduciary who is: (i) independent of and unrelated to Bank of America and its affiliates, and (ii) appointed to act on behalf of the In-house Plan with respect to the in-kind transfer of assets from one or more Portfolios to or for the benefit of the In-house Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Bank on America if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Bank of America, (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; except that an independent fiduciary may receive compensation from Bank of

America in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision, (iii) more than three percent (3%) of such fiduciary's gross income, for federal income tax purposes, in its current tax year, will be paid by Bank of America and its affiliates in the fiduciary's current tax year, or (iv) for the period comprising the tax years in which the independent fiduciary represents the In-house Plan, more than two percent (2%) of such fiduciary's aggregate gross income over such period will be paid by Bank of America and its affiliates.

(E) The term ''Transferable Securities'' shall mean securities (1) for which market quotations are readily available as determined under Rule 17(a)–7 of the 1940 Act; and (2) which are not: (i) Securities which may not be publicly offered or sold without registration under the 1933 Act; (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Nations Funds, or (b) permit transfers of ownership or securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

(F) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of ERISA (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

Written Comments

The Department received 28 written comments with respect to the proposed exemption. Of this amount, 27 comments sought clarification as to the terms of the proposed exemption. The remaining comment was submitted by BAC. In its letter, BAC stated the following:

(1) The Nations Managed SmallCap Index Fund was incorrectly identified in the proposed exemption (and exemption application) as the Nations Managed SmallCap Value Index Fund;

(2) The amount of fiduciary assets under BAC management was incorrectly stated in the proposed exemption (and exemption application) as totaling $231,000,000. Such amount, the applicant states, is $231,000,000,000;

(3) The heading of the proposed exemption should state that Bank of America is located in Charlotte, North Carolina.

In addition, in its letter to the Department, BAC stated that the names of certain parties to the proposed transaction have changed. In this regard, ''Bank of America Advisors, Inc.'' is now ''Banc of America Advisors, LLC'', and ''TradeStreet Investment Associates, Inc.'' is now ''Banc of America Capital Management, LLC''. In addition, BAC stated that the ''NationsBank Cash Balance Plan'' is now ''The Bank of America Pension Plan''.

BAC stated further that an additional Portfolio, the ''Nations MidCap Index Fund'', was added as an investment option to BAC's in-house plans in July 2000. Such portfolio may therefore be affected by the exemption. In addition, of the various Nations Funds and Portfolios affected by the exemption, the following have changed their names: ''Nations Disciplined Equity Fund'' is now ''Nations Aggressive Growth Fund'; ''Nations Equity Index Fund'' is now ''Nations LargeCap Index Fund'; ''Nations Emerging Growth Fund'' is now ''Nations MidCap Growth Fund'; ''Nations Managed SmallCap Index Fund'' is now ''Nations SmallCap Index Fund'; and ''Nations Small Company Growth Fund'' is now ''Nations Small Company Fund''.

Finally, BAC requests that the definition of Independent Fiduciary, as such term is defined in section II(D) of the proposed exemption, be modified. In this regard, BAC represents that, after reviewing several possible candidates for the position of independent fiduciary with respect to the transactions described herein, it specifically chose IFS to represent the In-house Plan. This decision was based on, among other things, the experience, qualifications and reputation IFS had representing ERISA plans in transactions similar to those contained in this exemption. BAC represents that, in addition to being so qualified, the income IFS has or will receive from BAC or any affiliate in association with the in-kind redemptions is of an amount which ensures IFS's independence. In this regard, BAC represents that for the period beginning on the date IFS was appointed to represent the In-house Plan and ending on the date the last in-kind redemption is expected to occur, the amount of income IFS will have received from BAC or any affiliate thereof will be less than 2% of IFS's aggregate gross taxable income over such period.

The Department recognizes that, in certain instances, proper representation of a plan may require that an independent plan fiduciary provide a level of services which varies greatly over time. In consideration of, among other things, the size and nature of the transaction involved in this exemption, the Department has decided to modify section II(D) of the proposed exemption to read as follows:

(D) The term ''Independent Fiduciary'' means a fiduciary who is: (i) independent of and unrelated to Bank of America and its affiliates, and (ii) appointed to act on behalf of the In-house Plan with respect to the in-kind transfer of assets from one or more Portfolios to or for the benefit of the In-house Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Bank on America if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Bank of America, (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; except that an independent fiduciary may receive compensation from Bank of America in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision, (iii) more than three percent (3%) of such fiduciary's gross income, for federal income tax purposes, in its current tax year, will be paid by Bank of America and its affiliates in the fiduciary's current tax year, or (iv) for the period comprising the tax years in which the independent fiduciary represents the In-house Plan, more than two percent (2%) of such fiduciary's aggregate gross income over such period will be paid by Bank of America and its affiliates.

Finally, as stated in footnote 6 of the proposed exemption, BAC represented that certain redeemed securities may have different purchase dates and tax bases attached to them as compared with otherwise identical securities remaining in a Portfolio. BAC subsequently clarified this point by noting that for each issue of securities held by a Portfolio, basis will be

allocated pro rata between the securities to be transferred to the In-house Plan and the securities which are to remain in the Portfolio.

Accordingly, after giving full consideration to the entire record, including the written comments noted above, the Department has decided to grant the exemption.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10848) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8544 (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of December, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 01–30756 Filed 12–11–01; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Notice of Extension of the Comment Periods for Proposed Exemptions Affected by the TemporaryClosure of the Mailroom at the Department of Labor

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor (the Department).

ACTION: Notice of Extension of Comment Periods.

SUMMARY: As a result of the recent anthrax scare, the Department's mailroom was closed between October 22, 2001 and November 26, 2001 in order that protective measures could be taken to ensure the appropriate handling of the mail as well as the general safety of the Department's employees. However, during this time frame, the following proposed individual and class exemptions were published in the **Federal Register** and requested comments from interested persons:

Case No.	FR Citation	Date	Plan/Entity Name
D–10762	66 FR 46830	9/7/01	Key Trust Company of Ohio.
D–10894	66 FR 46837	9/7/01	Brookshire Brothers, Ltd.
D–10913, D–10914	66 FR 46839	9/7/01	The Golden Comprehensive Security Program and The Golden Retirement Savings Program.
D–10954	66 FR 49400	9/27/01	Metropolitan Life Insurance Company.
L–10937	66 FR 49415	9/27/01	Ford Motor Company.
D–10997	66 FR 46843	9/7/01	Exemption to Modify Prohibited Transaction Exemption 97–08 Involving Morgan Stanley Dean Witter & Co. Incorporated.
D–11034	66 FR 49703	9/28/01	Proposed Amendment to Prohibited Transaction Exemption 80–26 for Certain Interest Free Loans to Employee Benefit Plans.

Because no written comments were received from interested persons while the mailroom was closed and the comment periods have since expired for these pendency notices, the Department is hereby extending the comment periods for the above referenced proposed exemptions until December 26, 2001. Therefore, all written comments and/or hearing requests should be sent by regular mail to the address specified in the proposals. Alternatively, interested persons may submit their comments and/or hearing requests by electronic mail to *moffittb@pwba.dol.gov* or by facsimile, (202) 219–0204.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras, U.S. Department of Labor, telephone (202) 693–8565. (This is not a toll-free number.)

Ivan L. Strasfeld,

Director of Exemption, Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 01–30757 Filed 12–11–01; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NMSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork

Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 66 FR 46292, and two comments, showing a positive response to NSF's implementation of a web-based job recruitment system, were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send E-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

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

Title: ''eRecruitment'' System.

OMB Control Number: 3145–NEW.

Summary of Collection:

Use of the Information: The information will be used by NSF to provide applicants with the ability to apply electronically for NSF positions and receive notification as to their qualifications, application dispensation and to request to be notified of future vacancies for which they may qualify.

In order to apply for vacancies, applicants will be required to submit certain data in order to receive consideration. Users only need access to the Internet for this system to work. This information will be used to determine which applicants are best qualified for a position, based on applicant responses to a series of job related ''yes/no'' or ''multiple choice'' questions. The resume portion requires applicants to provide the same information they would provide were they submitting a paper OF–612. The obvious benefit being that the applicant may do so on-line, 24 hours a day/seven days a week and receive electronic notification about the status of their application or information on other vacancies for which they may qualify. Staff members of the Human Resource Division and the selecting official(s) for specific positions for which applicants apply are the only ones privy to the applicant data. The most significant data is not the applicant personal data such as address or phone number but rather their description of their work experience and their corresponding responses to those questions, which determine their overall rating, ranking, and referral to the selecting official.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average less than 30 to 45 minutes to create the on line resume and potentially less than 10 to 15 minutes to apply for jobs on-line.

Respondents: Individuals. Approximately 4800 applicants apply for NSF vacancies a year. This number could potentially double based on evidence from other agencies that use electronic recruitment systems; the estimated number of responses is 6500.

Estimated Number of Responses: Approximately 25 responses per job opening.

Estimated Total Annual Burden on Respondents: Approximately 45 minutes per respondent total time is all that will be needed to complete the on-line application, for a total of 4,875 hours annually.

Frequency of Responses: Applicants need only complete the resume one time, and they may use that resume to apply as often as they wish for any NSF job opening.

Dated: December 6, 2001.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 01–30659 Filed 12–11–01; 8:45 am]

BILLING CODE 7555–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting

TIME & DATE: 2 PM, Monday, December 17, 2001.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW, Suite 800, Washington, DC 20005.

STATUS: Open/Closed.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, 202–220–2372.

AGENDA:

I. Call to Order
II. Approval of Minutes: September 21, 2001 Regular Meeting
III. Treasurer's Report
IV. Strategic Plan Adoption
V. Executive Directors Quarterly Management Report
VI. Executive Session (Closed)
  (A) Personnel Committee Report—11/14/01
  (B) Personnel Committee Report—12/04/01
VII. Adjournment

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 01–30853 Filed 12–10–01; 3:48 pm]

BILLING CODE 7570–01–M

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 November 19, 2001 through November 30, 2001. The last biweekly notice was published on November 28, 2001 (66 FR 59498).

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 January 11, 2002, 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

Date of amendment request: July 5, 2001.

Description of amendment request: The proposed amendment would relax Technical Specification (TS) operability requirements for primary containment systems, secondary containment systems, and the standby gas treatment system during the movement of irradiated fuel and during core alterations.

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 equipment affected by the proposed changes are mitigative in nature, and relied upon after an accident has been initiated. Application of the Alternative Source Term (AST) does not involve a change to the plant design. While the operation of the primary and secondary containment systems do change as a result of these proposed changes, these systems are not accident initiators. Application of the AST does not initiate a design basis accident. Similarly, application of the AST does not affect the design or operation for any equipment or systems involved in the mitigation of accidents. The proposed changes to the Technical Specifications (TS), while they revise certain performance requirements, do not involve any physical modifications to the plant. As a result, the proposed changes do not affect any of the parameters or conditions that could contribute to the initiation of any accidents. As such, removal of operability requirements during the specified conditions will not significantly increase the probability of occurrence for an accident previously analyzed.

The AST changes do not affect the design and operation of the facility. Rather, once the accident has been postulated the new source term is an input to the evaluation of the consequences. The implementation of the AST has been evaluated in revisions to the analyses of the worst case Fuel Handling Accident (FHA) at Clinton Power Station (CPS). Based on the results of the analyses, it has been demonstrated that, with the proposed changes, the dose consequences of the worst case FHA remain a small fraction of the regulatory guidance provided by the NRC for the AST in RG [regulatory guide] 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' dated July 2000. Since the primary containment systems, secondary containment systems and the Standby Gas Treatment (SGT) are not assumed to be operable in the FHA, the consequences of eliminating the requirements that these systems be operable during the handling of irradiated fuel in both primary and secondary containment or during core alterations will not increase significantly.

In summary, the proposed changes do 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?

No new equipment is introduced, and no installed equipment is operated in a new or different manner. There is no change to the predicted accident response of any plant structure, system or component. The proposed change in availability of mitigative equipment has been evaluated in accordance with the guidance in RG 1.183 and does not produce different or more limiting accident progression or results. As such, no new accident modes or equipment failure modes are created by these proposed 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 changes involve a selective application of the AST for the FHA consistent with the guidance provided in RG 1.183. The existing analyses demonstrated that the dose consequences associated with the FHA were within the applicable NRC specified limits. For offsite dose, the margin to safety for the FHA using the 10 CFR 100, ''Reactor Site Criteria,'' limits was maintained by the existing analysis. For the Control Room dose, the margin of safety using the 10 CFR 50, ''Domestic Licensing of Production and Utilization Facilities,'' Appendix A, ''General Design Criteria for Nuclear Power Plants,'' General Design Criteria 19, ''Control room,'' dose limits was conservatively maintained by the existing analyses. The results of the FHA analysis revised in support of this submittal however, are subject to revised acceptance criteria. The revised dose consequences of the limiting design basis FHA are within the acceptance criteria found in RG 1.183 and 10 CFR 50.67, ''Domestic Licensing of Production and Utilization Facilities, Accident Source Term.'' The proposed changes ensure that the doses at the exclusion area boundary (EAB), low population zone (LPZ), and control room remain a small fraction of the new regulatory limits in RG 1.183 and 10 CFR 50.67.

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: Robert Helfrich, Mid-West Regional Operating Group, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Anthony J. Mendiola.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: October 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 October 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: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

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 amendment request: October 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 October 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: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: May 24, 2001.

Description of amendment request: The proposed amendment would delete License Condition 2.C.(11), which is no longer applicable to the facility. License Condition 2.C.(11) requires inspection of the low-pressure turbine discs during the second refueling outage, including volumetric examination of the disc base using ultrasonic techniques, and specifies that the frequency of subsequent inspections shall be in accordance with the turbine manufacturer's recommendations. The amendment request states that the license condition is no longer applicable for the following reasons: (1) the initial inspection was completed during the second refueling outage as required; and (2) during fifth refueling outage, the low-pressure turbine rotors were replaced with monoblock designed rotors that do not utilize shrunk-on discs, and therefore the subsequent inspections specified in License Condition 2.C.(11) for shrunk-on discs would be meaningless with the new rotor design. The licensee's inspection and maintenance program for the new low-pressure turbine is based on the current turbine manufacturer's recommendations for the monoblock design.

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 removes Fermi 2 Operating License Condition 2.C.(11) which details the inspection frequency of the low-pressure (LP) turbine discs. The inspection frequency was recommended because the original turbine rotor design involved a shrunk-on disc configuration. The inspection attributes applied specifically to this disc design and were intended to enhance design reliability. In 1996, however, the LP turbine steam path consisting of rotors, buckets (blades), diaphragms and steam flow guides, all manufactured by English Electric Co., were replaced with General Electric (GE) components. In particular, the GE design does not utilize shrunk-on discs; it includes rotors of monoblock construction, thus negating the applicability of License Condition 2.C.(11). There are no relevant aspects of the

previously recommended inspections that apply to the new monoblock construction.

Section 3.5.1.2.1 of the Fermi 2 UFSAR [Updated Final Safety Analysis Report] addresses the potential for missiles generated from rotating equipment including those generated from a low-pressure turbine rotor segment. Section 10.2.3 of the UFSAR states that following the low-pressure turbine rotor replacement during RFO05, ''there will no longer be a design basis turbine missile at Fermi 2.'' Section 3.5.1.2.2 further states, ''The new low-pressure rotors are of monoblock construction. The monoblock rotors have higher speed capability than the maximum attainable speed of the turbine generator units. Per General Electric, the supplier of the new rotors, the probability of missiles being generated is well below 10 to the –8 power.'' There are no other postulated accidents that were directly attributable to the English Electric Company shrunk-on disc design; therefore, the removal of License Condition 2.C.(11) does not increase the probability of occurrence or the 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.

The proposed change removes License Condition 2.C.(11) because it is no longer applicable to the design of the low-pressure turbine currently installed at the facility. Therefore, removal of the license condition affects neither the design nor the operation of the plant. It cannot create a new failure mode, nor can its removal create the possibility of a new or different kind of accident than any accident previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

License Condition 2.C.(11) is not applicable to the facility because the low-pressure turbine rotor was replaced with a design which does not include shrunk-on turbine discs. This rotor replacement eliminated the potential for a design basis accident resulting from the turbine missiles at Fermi 2, which was the accident scenario that the inspections referenced in License Condition 2.C.(11) were intended to prevent. Since the license condition no longer applies to the current facility design, and the potential design basis accident associated with the license condition no longer exists, the removal of the license condition will not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Acting Section Chief: William D. Reckley, Acting.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: November 11, 2001.

Description of amendment request: A change is proposed to Technical Specification 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of '' * * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * *up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to the specification: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, 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 September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated November 11, 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 proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an 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 proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

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: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: William D. Reckley, Acting.

Dominion Nuclear Connecticut, Inc., et al., Docket Nos. 50–245, 50–336, and 50–423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of amendment request: November 8, 2001.

Description of amendment request: The proposed amendments would incorporate administrative and editorial changes into the Millstone Unit No. 1 Permanently Defueled Technical Specifications (PDTS) and into the Millstone Unit Nos. 2 and 3 Technical Specifications (TSs). Specifically, the proposed changes would: (1) Relocate redundant design features information already included in other licensing basis (LB) documents (e.g., the Final Safety Analysis Report (FSAR)), from Section 5.0, ''Design Features,'' of the Unit Nos. 2 and 3 TS, to other LB documents, consistent with the improved Standard Technical Specifications (STSs) for the respective unit design; (2) revise TS 5.6.2, ''Technical Specifications Bases Control Program,'' in the Unit No. 1 PDTS to incorporate the 10 CFR 50.59 rule change; (3) add a new TS (TS 6.22 for Unit No. 2 and TS 6.17 for Unit No. 3), to incorporate a TS bases control program within the Unit Nos. 2 and 3 TS; (4) add a new TS (TS 6.18, ''Component Cyclic or Transient Limits''), to the Unit No. 3 TS to define the program for tracking cyclic (or transient) limits. These limits are proposed to be relocated from where they are listed in TS 5.7, ''Component Cyclic or Transient Limit,'' in the Unit No. 3 TS, to the FSAR; (5) revise the Unit No. 1 PDTS and the Unit Nos. 2 and 3 TS related to Radiological Environmental Monitoring Program (REMP) procedure processing to: (a) remove reference to an organization affiliated with Northeast Utilities (NU), the Production Operations Services Laboratory, which is no longer applicable following the change in ownership from NU to Dominion Nuclear Connecticut (DNC); (b) replace the reference to the Radiological Assessment Branch (a Millstone DNC organization) with the ''organization responsible for the REMP'' for review/approval of changes to the REMP to avoid future TS changes due to a change in organizational titles; (c) correct an inconsistency within the Unit No. 1 PDTS which implies that REMP procedures are processed under the general procedure processing specification (*i.e.,* TS 5.5.1), in addition to the specific specifications for processing REMP procedure changes (*i.e.,* Specifications 5.5.6 and 5.5.7); and (6) correct miscellaneous editorial issues and achieve consistency between the TSs for each unit. These changes include: (a) Changes to and corrections in titles; (b) correct references to the quality assurance program, and (c) change titles to utilize the term radiation protection rather than health physics.

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 changes related to Section 5, ''Design Features,'' of the Unit Nos. 2 or 3 TS either relocates or deletes certain details from the Technical Specifications and relocates them to the respective unit's updated FSAR or other plant controlled documents. The FSAR and other plant controlled documents will be maintained in accordance with 10 CFR 50.59. The proposed changes to Section 6, ''Administrative Controls,'' adds new administrative specifications consistent with the guidance of the improved STS, corrects inconsistencies, or represents changes in nomenclature, and will correct editorial issues and achieve consistency within the individual TS and between individual TS. The changes are purely administrative or editorial and do not alter any regulatory requirements or have an impact on the acceptance criteria for any design basis accident described in the respective Unit Nos. 2 or 3 FSAR or the Unit No. 1 Defueled Safety Analysis Report (DSAR).

These changes have no impact on plant equipment operation. Since the changes are solely an administrative or editorial change to the TS, they cannot affect the likelihood or consequences of accidents. Therefore, these 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 have no impact on plant operation. Since the proposed changes are solely an administrative or editorial change to the TS, they do not affect plant operation in any way. The proposed changes do not involve a physical alteration of the plant or change the plant configuration (no new or different type of equipment will be installed). The proposed changes do not require any new or unusual operator actions. The changes do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The 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 administrative or editorial changes to the TS, they do not affect plant operation in any way. The proposed changes to the respective unit's technical specifications will standardize terminology, remove extraneous information and make minor format changes that will not result in any technical changes to current requirements.

The proposed changes do not impact any acceptance criteria for the design basis accidents described in the respective Unit Nos. 2 or 3 FSAR or the Unit No. 1 DSAR and do not impact the consequences of accidents previously evaluated. 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.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: May 25, 2001.

Description of amendment request: The amendments would revise Technical Specifications (TS) Definitions for ENGINEERED SAFETY FEATURE (ESF) RESPONSE TIME and REACTOR TRIP SYSTEM (RTS) RESPONSE TIME to provide for verification of response time for selected components provided that the components and the methodology for verification have been previously reviewed and approved by the Nuclear Regulatory Commission. The associated Bases will also be revised. The licensee has referenced previously approved WCAP–13632–P–A, Revision 2, ''Elimination of Pressure Sensor Response Time Testing Requirements,'' and WCAP–14036–P–A Revision 1, ''Elimination of Periodic Protection Channel Response Time Tests'' as the justifications for proposing these 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, which is presented below:

Conformance of the proposed amendments to the standards for a determination of no significant hazards as defined in 10 CFR 50.92 is shown in the following:

(1) The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change to the TS does not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same RTS and ESFAS instrumentation is being used; the time response allocations/modeling assumptions in the UFSAR Chapter 15 analyses are still the same; only the method of verifying time response is changed. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade, or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the UFSAR. Therefore, the proposed amendments do not result in any increase in the probability or consequences of an accident previously evaluated.

(2) The proposed license amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not alter the performance of the reactor protection system (RPS) or the engineered safety features actuation system (ESFAS). All RPS and ESFAS channels will still have response time verified by test before placing the channel in operational service and after any maintenance that could affect response time. Changing the method of periodically verifying instrument response for certain RPS and ESFAS channels (assuring equipment operability) from time response testing to calibration and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these instruments will detect significant degradation in the channel characteristic. Implementation of the proposed amendments does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed license amendments do not involve a significant reduction in a margin of safety.

This change does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method is modified to allow use of actual test data or engineering data. The method of verification still provides assurance that the total system response is within that defined in the safety analysis, since calibration tests will detect any degradation which might significantly affect channel response time. Based on the above, it is concluded that the proposed license amendment request does not result in a reduction in a margin with respect to plant safety.

Based on the preceding analysis, it is concluded that elimination of periodic [response time testing] RTT is acceptable and the proposed license amendments do not involve a significant hazards consideration finding as defined in 10 CFR 50.92.

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: Ms. Lisa F. Vaughn , Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 6, 2001.

Description of amendment request: The amendments would revise Technical Specifications (TS) 3.3.2 for engineered safety feature actuation system instrumentation, TS 3.3.6 for containment purge and exhaust isolation instrumentation. The amendments would also revise the appropriate bases, and the bases for Containment Isolation Valves (TS 3.6.3). Specifically, the proposed amendments would modify the TS requirements so that they exclude the Containment Purge Ventilation System and the Hydrogen Purge System, thereby applying the requirements to only the Containment Air Release and Addition System. At Catawba, the containment isolation valves for the Containment Purge Ventilation System and the Hydrogen Purge System are sealed closed in the modes of applicability (Modes 1, 2, 3, and 4) according to TS requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if 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.

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Neither the Containment Purge Ventilation System, the Hydrogen Purge System, nor the Containment Air Release and Addition System is capable of by itself initiating any accident. The safety related portions of these systems, which are responsible for maintaining containment isolation during accident conditions, will continue to function as designed, and in accordance with all applicable TS. The design and operation of the systems are not being modified by this proposed amendment. Therefore, there will be no impact on any accident probabilities or consequences.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators and does not impact any safety analyses.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed amendment. It has already been shown that the performance of all containment isolation functions in response to accident conditions will not be impacted by this proposed amendment. There is no risk significance to this proposed amendment, as no reduction in system or component availability will be incurred. No safety margins will be impacted.

Based upon the preceding discussion, Duke Energy has concluded that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn , Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: September 24, 2001.

Description of amendment request: The amendment request proposes to extend the allowed outage time for a Division I or Division II Emergency Diesel Generator (EDG) from 72 hours to 14 days. The proposed changes are intended to provide flexibility in scheduling EDG maintenance activities, reduce refueling outage duration, and improve EDG availability during plant shutdowns.

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 proposed Technical Specification (TS) changes do not affect the design, operational characteristics, function, or reliability of the EDGs. The EDGs are not the initiators of previously evaluated accidents. The EDGs are designed to mitigate the consequences of previously evaluated accidents including a loss of offsite power. Extending the allowed outage time (AOT) for a single EDG would not significantly affect the previously evaluated accidents since the remaining EDGs supporting the redundant ESF [Engineered Safety Feature] systems would continue to perform the accident mitigating functions as designed.

The duration of a TS AOT is determined considering that there is a minimal possibility that an accident will occur while a component is removed from service. A risk-informed assessment was performed which concluded that the increase in plant risk is small and consistent with the USNRC [United States Nuclear Regulatory Commission (NRC)] ''Safety Goals for the Operations of Nuclear Power Plants; Policy Statement,'' **Federal Register**, Vol. 51, p.30028 (51 FR 30028), August 4, 1986, as further described by NRC Regulatory Guide 1.177.

The current TS requirements establish controls to ensure that redundant systems relying on the remaining EDGs are Operable. In addition to these requirements, administrative controls will be established to provide assurance that the AOT extension is not applied during adverse weather conditions that could potentially affect offsite power availability.

Both the RBS [River Bend Station, Unit 1] risk-based analysis and the deterministic evaluation support the increased AOT. 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 TS changes do not involve a change in the design, configuration, or method of operation of the plant that could create the possibility of a new or different kind of accident. The proposed change extends the AOT currently allowed by the TS.

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 extended AOT is not in conflict with any of the approved codes and standards applicable to the onsite AC [Alternating Current] power sources. The proposed changes do deviate from the recommendations of Regulatory Guide (RG) 1.93. An extension of the 72 hour AOT recommended in the RG to 14 days is demonstrated herein to be acceptable and has been approved for several other licensees. Assuming there are no additional failures of redundant equipment during the time that the EDG is removed from service, the intended safety functions would still be met.

The proposed AOT change does not affect any of the assumptions or inputs to the safety analyses of the FSAR [Final Safety Assessment Report] and does not erode the decrease in severe accident risk achieved with the issuance of the Station Blackout (SBO) Rule, 10 CFR 50.63 ''Loss of All Alternating Current Power''. RBS is classified as a four-hour coping plant with 0.95 EDG reliability (see U[pdated] FSAR Appendix 15C). The assumptions used in the SBO [Station Blackout] analysis regarding reliability of the EDGs are unaffected by the proposed TS changes since preventive maintenance and testing will continue to be performed to maintain reliability assumptions.

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: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit Number 3, Westchester County, New York

Date of amendment request: October 23, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.5.10, ''Ventilation Filter Testing Program,'' to adopt the requirements of the American Society for Testing and Materials Standard (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon.'' The proposed TS revisions are in response to Nuclear Regulatory Commission (NRC) Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.'' The proposed amendment would also revise the differential pressure criteria for the test of the filter system for the Control Room Ventilation System.

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?*

The proposed license amendment adopts the new test method and acceptance criteria of ASTM D3803–1989, with the exceptions identified, for activated charcoal filters and changes the allowable pressure differential for Control Room ventilation. The changes require laboratory performance testing of adsorber carbon that yields a more accurate result than the testing currently required by the TS and requires a more stringent limit on the Control Room ventilation pressure differential. The proposed change to delete non-conservative TS requirements for testing of adsorber carbon and limiting the Control Room ventilation differential pressure are not plant accident initiators as described in the Final Safety Analysis Report (FSAR). The proposed amendment does not change the function of any structure, system or component (SSC). The function of the ventilation systems is filtration of radiological releases during postulated accidents. The proposed changes will provide greater assurance that this function is provided. The revised TS requirements are for laboratory tests and pressure differential measurements that are currently in place and change only the TS testing requirements. They will not result in any changes to the efficiency assumed in accident analysis. The changes do not alter, degrade or prevent actions described or assumed in an accident described in the FSAR. Therefore, the proposed amendment does not change the possibility of an accident previously evaluated or significantly increase the 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 license amendment adopts the new test method and acceptance criteria of ASTM D3803–1989, with the exceptions

identified, for activated charcoal filters and changes the allowable pressure differential for Control Room ventilation. The change does not involve any modifications to the plant, will not require changes to how the plant is operated nor will it affect the operation of the plant. The changes require laboratory performance testing of adsorber carbon that yields a more accurate result than the testing currently required by the TS and requires a more stringent limit on the Control Room ventilation pressure differential. The proposed changes to delete non-conservative TS requirements for testing of adsorber carbon and limiting the Control Room ventilation differential pressure are not plant accident initiators as described in the Final Safety Analysis Report (FSAR). The proposed amendment does not change the function of any structure, system or component (SSC). The function of the ventilation systems is filtration of radiological releases during postulated accidents. The proposed changes will provide greater assurance that this function is provided. The revised TS requirements are for laboratory tests and pressure differential measurements that are currently in place and change only the TS testing requirements. They will not result in any changes to the efficiency assumed in accident analysis. The changes do not alter, degrade or prevent actions described or assumed in an accident described in the FSAR. 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 proposed license amendment involve a significant reduction in a margin of safety?*

The proposed license amendment adopts the new test method and acceptance criteria of ASTM D3803–1989, with the exceptions identified, for activated charcoal filters and changes the allowable pressure differential for Control Room ventilation. The proposed license amendment does not reduce the margin of safety but enhances by requiring more accurate testing and a more conservative pressure differential. The proposed test change will require the use of a current and improved ASTM standard to ensure that the carbon ability to adsorb radioactive material will remain at or above the capability credited in our accident analysis. The proposed differential pressure limit will assure that the system provides sufficient flow though the charcoal to meet accident analyses.

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 Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: L. Raghavan (Acting).

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: October 23, 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 Nuclear Regulatory Commission (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 23, 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 [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, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: September 28, 2001.

Description of amendment request: The licensee proposes to revise a single Anticipated Transient Without Scram (ATWS) Recirculation Pump Trip Reactor Pressure High setpoint to replace the current conditional setpoints which are based upon the number of Safety Relief Valves out of service.

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 because: a change in the ATWS high RPV [reactor pressure vessel] pressure RWR [ATWS Reactor Pressure High Recirculation Pump] pump trip setpoint does not affect initiation of any accident. Operation in accordance with the revised setpoint ensures the consequences of previously analyzed accidents are not changed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because: RPV pressure following an ATWS with PRFO [Pressure Regulating Valve Open] event (worst case transient for RPV pressurization) remains within acceptable limits with the revised setpoint. Therefore, changing the setpoint will not lead to a new or different kind of accident.

3. Involve a significant reduction in a margin of safety because: the analyses performed to determine the revised ATWS high pressure RWR pump trip setpoint assure maintenance of the same margin of safety as presently exists for limiting RPV pressure following an ATWS with PRFO (limiting transient). The current analyses actually shows an improved margin over the results of the previous analyses (References 2 and 3), which were performed using an earlier computer code.

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. David E. Blabey, 1633 Broadway, New York, New York 10019.

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 30, 2001.

Description of amendment request: The license amendment request proposes changes to Arkansas Nuclear One, Unit 2 (ANO–2) Technical Specification (TS) 3.4.9, ''Pressure/Temperature Limits,'' and TS 3.4.12, ''Low Temperature Overpressure Protection (LTOP) System.'' The primary changes are to update the existing pressure/temperature (P/T) limits from 21 to 32 effective full power years (EFPYs) and to include additional restrictions in the LTOP TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The probability of occurrence of an accident previously evaluated for ANO–2 is not altered by the proposed amendment to the technical specifications (TSs). The accidents remain the same as currently analyzed in the ANO–2 Safety Analysis Report (SAR) as a result of changes to the P/T limits as well as those for LTOP. The new P/T and LTOP limits were based on NRC [Nuclear Regulatory Commission] accepted methodologies along with ASME [American Society of Mechanical Engineers] Code [Boiler and Pressure Vessel Code] alternatives. The proposed changes do not impact the integrity of the reactor coolant pressure boundary (RCPB) (i.e. there is no change to the operating pressure, materials, loadings, etc.) as a result of this change. In addition, there is no increase in the potential for the occurrence of a loss of coolant accident. The probability of any design basis accident is not affected by this change, nor are the consequences of any design basis accident (DBA) affected by this proposed change. The proposed P/T limit curves and the LTOP limits are not considered to be an initiator or contributor to any accident currently evaluated in the ANO–2 SAR. These new limits ensure the long term integrity of the RCPB.

Fracture toughness test data are obtained from material specimens contained in capsules that are periodically withdrawn from the reactor vessel. These data permit determination of the conditions under which the vessel can be operated with adequate safety margins against non-ductile fracture throughout its service life. A new reactor vessel specimen capsule was withdrawn at the most recent refueling outage and was analyzed to predict the fracture toughness requirements using projected neutron fluence calculations. For each analyzed transient and steady state condition, the allowable pressure is determined as a function of reactor coolant temperature considering postulated flaws in the reactor vessel beltline, inlet nozzle, outlet nozzle, and closure head.

The predicted radiation induced ΔRT_{NDT} [shift in reference temperature for nil-ductility transition] was calculated using the respective reactor vessel beltline materials copper and nickel contents and the neutron fluence applicable to 32 EFPY including an estimated increase in flux due to a proposed power uprate. The ΔRT_{NDT} [reference temperature for nil-ductility transition] and, in turn, the operating limits for ANO–2 were adjusted to account for the effects of irradiation on the fracture toughness of the reactor vessel materials. Therefore, new operating limits are established which are represented in the revised operating curves for heatup/criticality, cooldown and inservice hydrostatic testing contained in the technical specifications.

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 changes to the P/T and LTOP limits will not create a new accident scenario. The requirements to have P/T and LTOP protection are part of the licensing basis of ANO–2. The proposed changes

reflect the change in vessel material properties acknowledged and managed by regulation and the best data available in response to NRC Generic Letter 92–01, Revision 1. The approach used meets NRC and ASME regulations and guidelines. The calculational methodology for fluence is based on an NRC approved Framatome ANP approach. Therefore, the adjusted reference temperatures for fracture toughness are consistent with that previously provided to the NRC. The data analysis for the vessel specimen removed at 2R14 (approximately 15.7 EFPY of exposure) confirms that the vessel materials are responding as predicted.

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 existing P/T curves and LTOP limits in the technical specifications are reaching their expiration period for the number of years at effective full power operation. The revision of the P/T limits and curves will ensure that ANO–2 continues to operate within the operating margins allowed by 10 CFR 50.60 and the ASME Code. The material properties used in the analysis are based on results established through CE [Combustion Engineering] material reports for copper and nickel content. The application of ASME Code Case N–641 presents alternative procedures for calculating P/T and LTOP temperatures and pressures in lieu of that established for ASME Section XI, Appendix G–2215. This Code alternative allows certain assumptions to be conservatively reduced. However, the procedures allowed by Code Case N–641 still provide significant conservatism and ensure an adequate margin of safety in the development of P/T operating and pressure test limits to prevent non-ductile fractures.

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.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of amendment request: November 19, 2001.

Description of amendment request: The proposed amendment would to eliminate restrictions imposed by technical specification (TS) 3.0.4 for the Remote Shutdown 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. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated

The Remote Shutdown Instrumentation system ensures that sufficient capability is available to permit shutdown and maintenance of Hot Standby of the plant from locations outside of the control room. The proposed change allows Unit 1 to ascend in mode without meeting the LCO [limiting condition for operation] for TS 3.3.3.5. The proposed change does not impact the ability to comply with the allowed outage time (AOT) described in TS 3.3.3.5. As such, the proposed change does not affect any accident initiators or precursors, since the AOT for TS 3.3.3.5 will continue to be met. The proposed change is also consistent with the Unit 2 TS. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased.

The format changes do not impact any accident initiators or precursors. Thus, the probability of occurrence of an accident previously evaluated is not significantly increased.

Consequences of an Accident Previously Evaluated

The proposed change to allow Unit 1 to ascend in mode without meeting the LCO for TS 3.3.3.5, while continuing to meet the action statement, will not significantly impact the Remote Shutdown Instrumentation systems' capability of performing its design function. The Remote Shutdown Instrumentation ensures that sufficient capability is available to permit shutdown and maintenance of Hot Standby of the plant from locations outside of the control room. The proposed change does not impact the ability to comply with AOT described in TS 3.3.3.5. The proposed change is also consistent with the Unit 2 TS. Thus, there will be no increase in offsite doses, and the consequences of an accident previously analyzed are not increased.

The format changes do not impact the function of the Remote Shutdown Instrumentation. Thus, there will be no increase in offsite doses, and the consequences of an accident previously analyzed are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The Remote Shutdown Instrumentation system ensures that sufficient capability is available to permit shutdown and maintenance of Hot Standby of the plant from locations outside of the control room. Allowing Unit 1 to ascend in mode without meeting the LCO for TS 3.3.3.5, while continuing to meet the action statement, does not change the function of the Remote Shutdown Instrumentation system or create the possibility of a new or different type of accident. The proposed change does not impact the ability to comply with the AOT described in TS 3.3.3.5. The proposed change is also consistent with the Unit 2 TS. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The format changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not impact the Remote Shutdown Instrumentation system's capability of performing its design function, nor does the proposed change impact the operational characteristics of the Remote Shutdown Instrumentation system. The Remote Shutdown Instrumentation ensures that sufficient capability is available to permit shutdown and maintenance of Hot Standby of the plant from locations outside of the control room. Allowing Unit 1 to ascend in mode without meeting the LCO for TS 3.3.3.5, while continuing to meet the action statement, does not impact CNP's accident analysis. The proposed change is also consistent with the Unit 2 TS. Therefore, the 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 requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: William D. Reckley, Acting.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: October 12, 2001.

Description of amendment requests: The proposed amendments would delete 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 October 12, 2001.

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—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.

Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: William D. Reckley, Acting.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: November 1, 2001.

Description of amendment requests: The proposed amendments would revise technical specification (TS) surveillance requirements (SR) 4.8.2.3.2.c.2 and 4.8.2.5.2.c.2 and associated TS bases concerning the safety-related batteries to make them more consistent with the Westinghouse Standard TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Probability of Occurrence of an Accident Previously Evaluated

The proposed change to SRs 4.8.2.3.2.c.2 and 4.8.2.5.2.c.2 to add a requirement to remove visible corrosion and to delete the requirement that the battery be free of corrosion does not affect any accident initiators or precursors. The batteries perform a mitigating function following a loss of AC power, and the presence of corrosion will not adversely impact components whose failure would initiate an accident. Thus, the probability of occurrence of an accident previously evaluated is not significantly increased.

The proposed change to the TS 3/4.8 bases provides clarification and does not affect any accident initiators or precursors. Thus, the probability of occurrence of an accident previously evaluated is not significantly increased.

The proposed change to SRs 4.8.2.3.2.c.3 and 4.8.2.5.2.c.3 increases the battery charger current required during surveillance testing. The required value is within the capability of

the battery charger. Thus, the battery charger is not degraded by this change, and the change does not affect any accident initiators or precursors. Thus, the probability of occurrence of an accident previously evaluated is not significantly increased.

The proposed changes to SR 4.8.2.3.2.d delete the requirement that the battery terminal voltage be maintained greater than or equal to 210 volts during the battery service test, and delete the description of the composite load profile. The removal of the requirement and the description from the SR do not affect any accident initiators or precursors. Thus, the probability of occurrence of an accident previously evaluated is not significantly increased.

The deletion of Tables 4.8–2 and 4.8–3, the incorporation of the words ''this page intentionally left blank,'' and the deletion of the SR 4.8.2.3.2.d and SR 4.8.2.5.2.d references to the tables do not impact battery operation as the tables summarize information used as calculation inputs. These changes do not affect any accident initiators or precursors. Thus, the probability of occurrence of an accident previously evaluated is not significantly increased.

The proposed changes to SR 4.8.2.5.2.d to delete the requirement that the battery terminal voltage be maintained greater than or equal to 210 volts during the battery service test, and to add the term ''design duty cycle'' does not affect any accident initiators or precursors. Thus, the probability of occurrence of an accident previously evaluated is not significantly increased.

The editorial change does not impact any accident initiators or precursors. Thus, the probability of occurrence of an accident previously evaluated is not significantly increased.

Consequences of an Accident Previously Evaluated

The batteries and their associated chargers provide power to emergency equipment that is used in the mitigation of accidents. The batteries provide power to this equipment following a loss of AC power until the battery chargers are powered by the emergency diesel generators.

The proposed change to SRs 4.8.2.3.2.c.2 and 4.8.2.5.2.c.2 to add a requirement to remove visible corrosion and to delete the requirement that the battery connections be free of corrosion does not impact a battery's capability to power its safety-related loads as the presence of corrosion at the terminal connections does not indicate that the battery is unable to perform its function. Rather, it is the impact of the corrosion on the connections that is of concern. This concern will be addressed by performing a resistance check to verify that battery performance is acceptable. Therefore, this change does not result in an increase in offsite doses. Thus, the consequences of an accident previously analyzed are not increased.

The proposed change to the TS 3/4.8 bases provides clarification and does not impact the battery's capability to power its safety-related loads. Thus, the consequences of an accident previously analyzed are not increased.

The proposed change to SRs 4.8.2.3.2.c.3 and 4.8.2.5.2.c.3 to increase the required battery charger current ensures that the battery charger has sufficient capacity to provide power to emergency equipment while simultaneously recharging batteries that were discharged following a loss of AC power. This ensures that emergency equipment connected to the battery will continue to operate as designed, and offsite doses will not be increased. Thus, the consequences of an accident previously analyzed are not increased.

The proposed changes to SR 4.8.2.3.2.d delete the requirement that the battery terminal voltage be maintained greater than or equal to 210 volts during the battery service test, and delete the description of the composite load profile. However, the SR will still require that the service test demonstrate that the battery capacity is adequate to supply emergency loads. The voltage requirements for the batteries are determined by battery-system specific calculations, and the calculation results are incorporated into the test procedures. This assures that the equipment connected to the battery will continue to operate as designed, and offsite doses will not be increased. Thus, the consequences of an accident previously analyzed are not increased.

The deletion of Tables 4.8–2 and 4.8–3, the addition of the words ''this page intentionally left blank,'' and the deletion of the SR 4.8.2.3.2.d and SR 4.8.2.5.2.d references to the tables do not impact battery operation as the tables summarize information used as calculation inputs. The batteries are tested to a load profile that is developed on the basis of the battery loads for a loss of AC power, and the testing assures that the batteries are capable of performing their safety function. Thus, these changes will not impact battery capability, will not result in an increase in offsite doses, and the consequences of an accident previously analyzed are not increased.

The proposed changes to SR 4.8.2.5.2.d to delete the requirement that the battery terminal voltage be maintained greater than or equal to 210 volts during the battery service test, and to add the term ''design duty cycle'' requires that the battery be tested in accordance with a load profile developed on the basis of the battery loads for a loss of AC power. The testing of the battery assures that it is capable of performing its safety function. Thus, the capability of the battery is not impacted, there will be no increase in offsite doses, and the consequences of an accident previously analyzed are not increased.

The editorial change does not impact battery capability. Thus, there will be no increase in offsite doses, and the consequences of an accident previously analyzed are not increased.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The batteries perform a mitigating function by providing power to emergency equipment following a loss of AC power.

The proposed change to SRs 4.8.2.3.2.c.2 and 4.8.2.5.2.c.2 adds a requirement to remove visible corrosion and deletes the requirement that the battery terminals be free of corrosion. The presence of corrosion on the battery terminals does not introduce a mechanism that would cause a plant transient, and I&M will ensure that the corrosion does not impact the battery's function. Thus, the possibility of a new or different kind of accident is not created.

The proposed change to the TS 3/4.8 bases provides clarification and does not introduce a mechanism that would cause a plant transient. Thus, the possibility of a new or different kind of accident is not created.

The proposed change to SRs 4.8.2.3.2.c.3 and 4.8.2.5.2.c.3 increases the acceptance criterion for battery charger current to reflect the present demand on the battery charger when it is simultaneously supplying power to emergency equipment and charging a discharged battery. The increase in the acceptance criterion is within the capability of the battery charger, and no failure mechanisms are introduced by this change. Thus, the change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to SR 4.8.2.3.2.d to delete the requirement that the battery terminal voltage be maintained greater than or equal to 210 volts during a battery service test, and to delete the load profile description do not directly impact any emergency equipment as the SR continues to require that the battery service test demonstrate that the battery is capable of supplying power to connected equipment, and this change does not introduce any battery failure mechanisms. Thus, the change does not create the possibility of a new or different kind of accident from any previously evaluated.

The deletion of Tables 4.8–2 and 4.8–3, the incorporation of the words ''this page intentionally left blank,'' and the deletion of the SR 4.8.2.3.2.d and SR 4.8.2.5.2.d references to the tables do not impact battery operation as the tables summarize information used as calculation inputs. Thus, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to SR 4.8.2.5.2.d to delete the requirement that the battery terminal voltage be maintained greater than 210 volts during a battery service test, and to add the term ''design duty cycle'' do not introduce any battery failure mechanisms as they do not alter the battery's physical characteristics or the battery testing requirements. Additionally, the term ''design duty cycle'' more accurately reflects the use of a simulated load for the battery test. Thus, the change does not create the possibility of a new or different kind of accident from any previously evaluated.

The editorial change does not create the possibility of a new or different kind of accident from any previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not impact the functional requirements of either the

batteries or the battery chargers, nor do the changes impact the operational characteristics of the equipment that is connected to the battery. The batteries will continue to be subjected to a system test to verify that the battery capacity is adequate, and the battery chargers will be tested to verify that they are capable of meeting their rated capacity. These tests will demonstrate that the batteries and the battery chargers are capable of performing their mitigation function for analyzed accidents.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: William D. Reckley, Acting.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: November 16, 2001.

Description of amendment requests: The proposed amendments would revise technical specification (TS) Table 3.3–4, ''Engineered Safety Feature Actuation System Instrumentation Trip Setpoints.'' The proposed changes are part of a planned design change to replace the existing 4kV offsite power transformers, loss of voltage relays, and degraded voltage relays with components of an improved design to increase the reliability of offsite power for safety-related equipment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?*

Probability of Occurrence of an Accident Previously Evaluated

The proposed changes to the degraded voltage and loss of voltage setpoints and time delay affect when an emergency bus that is experiencing low or degraded voltage will trip from offsite power and shift to an emergency diesel generator. While the setpoints that initiate this action will be modified, the function remains the same. The setpoints have been analyzed to ensure spurious trips will be avoided. The proposed changes will not significantly affect any accident initiators or precursors. The format changes are intended to improve readability, consistency with NUREG–1431, Revision 2, and appearance. In addition, they do not alter any requirements. The bases change provides explanatory information only. Thus, the probability of occurrence of an accident previously evaluated is not significantly increased.

Consequences of an Accident Previously Evaluated

The proposed changes to the degraded voltage and loss of voltage setpoints and time delay affect when an emergency bus that is experiencing low or degraded voltage will trip from offsite power and shift to an emergency diesel generator. While the setpoints that initiate this action will be modified, they are bounded by the current safety analysis. The function of the plant equipment remains the same. The proposed changes improve the reliability of safety-related equipment to operate as designed. The format changes are intended to improve readability, consistency with NUREG–1431, Revision 2, and appearance. In addition, they do not alter any requirements. The bases change provides explanatory information only. Thus, the consequences of an accident previously analyzed are not significantly increased.

2. *Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?*

The proposed changes to the degraded voltage and loss of voltage setpoints and time delay do not affect existing or introduce any new accident precursors or modes of operation. The relays will continue to detect undervoltage conditions and transfer safety loads to the emergency diesel generators at a voltage level adequate to ensure proper safety equipment performance and to prevent equipment damage. The function of the relays remains the same. The format changes are intended to improve readability, consistency with NUREG–1431, Revision 2, and appearance. In addition, they do not alter any requirements. The bases change provides explanatory information only. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *Does the change involve a significant reduction in a margin of safety?*

The proposed changes will allow all safety-related loads to have sufficient voltage to perform their intended safety function while ensuring spurious trips are avoided. Thus, the results of the accident analyses will not be affected as the input assumptions are protected. The format changes are intended to improve readability, consistency with NUREG–1431, Revision 2, and appearance. In addition, they do not alter any requirements. The bases change provides explanatory information only. Thus, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: William D. Reckley, Acting Section Chief.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: August 2, 2001, as supplemented November 2, 2001.

Description of amendment request: The amendment would change the Seabrook Station Technical Specification (TS) 6.15 to permit a one-time exception to the 10-year frequency for the Integrated Leakage Rate Test (ILRT). This exception would permit the existing ILRT frequency to be extended from 10 years to 15 years from the last test completed on October 30, 1992.

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 the Seabrook Station Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed revision to TS 6.15 adds a one-time extension to the current interval for the ILRT test. It is proposed that the current test interval be extended from ten-years to fifteen-years from the date of the last ILRT performed on October 30, 1992. The proposed extension cannot increase the probability of an accident previously evaluated since the test interval extension does not involve modification of the plant, nor a operation of the plant that could initiate an accident. The proposed extension of the ILRT does not involve a significant increase in the consequences of an accident. The increase in risk is very small because ILRTs identify only a few potential leakage paths that cannot be identified by local leakage rate [Type B and C] testing, and the leaks that have been found by ILRTs have been only marginally above existing requirements. An analysis of the 144 ILRT results including 23 failures, found that no ILRT failures were due to a containment liner breach. NUREG–1493 [''Performance-Based Containment Leak Test Program''] concluded that reducing the ILRT testing frequency to one per twenty years would lead to an imperceptible increase in risk.

Therefore, it is concluded that the proposed change to TS 6.15 does not involve

a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to Technical Specification 6.15 does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change adds a one-time extension to the current Integrated Leakage Rate Test frequency of ten-years to fifteen-years from the date of the last test. The proposed change cannot create the possibility of a new or different type of accident since there are no physical changes being made to the plant. Additionally, there are no changes to the operation of the plant that could introduce a new failure mode creating an accident.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed change does not involve a significant reduction in the margin of safety. The proposed revision to TS 6.15 adds a one-time extension to the current interval for the ILRT test. It is proposed that the current test interval be extended from ten-years to fifteen-years from the date of the last ILRT performed on October 30, 1992. A reduction in the ILRT frequency was found to lead to an imperceptible decrease in the margin of safety. The estimated increase in risk is very small because ILRTs identify only a few potential leakage paths that cannot be identified by local leakage rate [Type B and C] testing, and the leaks that have been found by ILRTs have been only marginally above existing requirements. A Seabrook Station specific risk evaluation is consistent with the generic conclusions identified in NUREG–1493.

Based on the above evaluation, North Atlantic concludes that the proposed change to TS 6.15 does not constitute a significant hazard.

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, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: October 22, 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 Nuclear Regulatory Commission (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 22, 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: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: William D. Reckley, Acting.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: October 16, 2001.

Description of amendment request: The proposed amendment would revise the Susquehanna Steam Electric Station (SSES), Units 1 and 2, Technical Specifications (TSs). The licensee proposed to revise selected sections of the administrative controls chapter of the TSs consistent with Nuclear Regulatory Commission (NRC) approved Technical Specification Task Force (TSTF) generic changes to NUREG–1433, ''Standard Technical Specifications for General Electric Plants (BWR/4),'' Revision 1 (STS). The licensee also proposed editorial and administrative changes to the affected sections.

The licensee categorized the proposed changes as either ''Administrative Changes'' or ''Less Restrictive Changes—Removed Detail.'' The licensee categorized proposed changes consistent with the approved versions of TSTF–273, TSTF–299, TSTF–308, TSTF–348, and TSTF–364 as ''Administrative Changes.'' An administrative change involves editorial restructuring of the current requirements, or modification of wording that does not affect the technical content of the current TSs. Administrative changes are not intended to add, delete, or relocate any technical requirements of the current TSs. The licensee categorized proposed changes consistent with the approved versions of TSTF–279 and TSTF–363 as ''Less Restrictive Changes—Removed Detail.'' The proposed changes involve moving details out of the TSs and into the TS Bases, the updated Final Safety Analysis Report (UFSAR), the Technical Requirements Manual (TRM), or other documents for which changes are subject to regulatory control. The removal of this information is considered to be less restrictive because it is no longer controlled by the TS change process.

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:

Administrative Changes

1. *Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?*

The proposed change involves reformatting, renumbering, and rewording the existing [technical specification] TS. The reformatting, renumbering, and rewording process involves no technical changes to the existing TS. As such, this change is administrative in nature and does not affect the initiators of analyzed events or assumed mitigation of accidents or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Does the 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 alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or eliminate any old requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *Does the proposed change involve a significant reduction in a margin of safety?*

The proposed change will not reduce a margin of safety because it has no effect on any safety analyses assumptions. Therefore, the change does not involve a significant reduction in a margin of safety.

Less Restrictive Changes—Removed Detail

1. *Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?*

The proposed change relocates certain details from the TS to other documents under regulatory control. The TS Bases, [updated final safety analysis report] UFSAR, and [Technical Requirements Manual] TRM will be maintained in accordance with 10 CFR 50.59. In addition to 10 CFR 50.59 provisions, the TS Bases are subject to the change control provisions in the Administrative Controls Chapter of the TS. The UFSAR is subject to the change control provisions of 10 CFR 50.71(e). Other documents are subject to controls imposed by TS or regulations. Since any changes to these documents will be evaluated, no significant increase in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Does the 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 alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or eliminate any old requirements, and adequate control of the information will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *Does the proposed change involve a significant reduction in a margin of safety?*

The proposed change will not reduce a margin of safety because it has no effect on any safety analyses assumptions. In addition, the details to be moved from the TS to other documents are the same as the existing TS. Since any future changes to these details will be evaluated, no significant reduction in a margin of safety will be allowed. A significant reduction in a margin of safety is not associated with the elimination of the 10 CFR 50.92 requirement for NRC review and approval of future changes to the relocated details. The proposed change is consistent with NUREG 1433, issued by the NRC staff, revising the TS to reflect the approved level of detail, which indicates that there is no 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: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: L. Raghavan, Acting.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: October 25, 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 an 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 25, 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 [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: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: L. Raghavan, Acting.

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: August 20, 2001.

Description of amendment request: The licensee is proposing to revise Virgil C. Summer Nuclear Station (VCSNS) Technical Specifications (TS) to add a footnote to Table 3.3–3 regarding the Steam Line Isolation and Engineered Safety Feature Actuation System (ESFAS) functions. This revision will allow VCSNS to exclude ESFAS steam line isolation instrumentation operability in Mode 3 when the main steam isolation valves, along with associated bypass valves, are closed and disabled, and ease the restriction of Specification 3.0.4 when performing reactor coolant system (RCS) resistance temperature device (RTD) cross calibrations at temperatures below the ESFAS P–12 Interlock for Low-Low T^{avg}. This request is consistent in part with the improved Standard Technical Specifications (ITS).

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 change involve a significant increase in the probability or consequences of an accident previously evaluated?*

[The] proposed changes involve upgrading the VCSNS TS to more closely agree with ITS and does not result in any hardware changes. The proposed change revises the applicability for the initiating functions of the main steam isolation function such that when a main steam line isolation valve is closed and the isolation function is accomplished, the automatic initiation of this function is no longer required to be operable. The ESFAS is not assumed to be an initiator of any analyzed event. The role of the ESFAS is in mitigating and thereby limiting the consequences of accidents. The proposed change continues to adequately ensure the operability of the ESFAS main steam line isolation function when the lines are unisolated and thereby ensures the protection provided by the function remains operable when required. The relaxation of the P–12 Function during RCS RTD cross calibration allows all associated narrow range temperature channels to remain in test, with test circuitry installed, during the transition between Modes 4 and 3. Surveillance performance is administratively controlled by plant procedures which assure testing is conducted below the ESFAS P–12 interlock setpoint of 552 °F and that TS limits for mode operability are not exceeded. Therefore, the results of the analyses described in the FSAR [Final Safety Analysis Report] remain bounding. Additionally, the proposed change does not impose any new safety analyses limits or alter the plant's ability to detect or mitigate events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?*

The proposed changes involve upgrading the ESFAS area of the VCSNS TS to more closely agree with ITS and to support RCS RTD cross calibration. The changes do not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *Does this change involve a significant reduction in margin of safety?*

The proposed change, which upgrades the ESFAS area of the VCSNS TS to be more consistent with ITS and supports RCS RTD cross calibration, does not have an adverse impact on any design basis safety analysis. In combination with administrative controls, required safety functions will continue to be accomplished in accordance with safety analysis assumptions. As such, the results of the analyses described in the FSAR remain bounding [, thus] assuring the proposed change does not involve a significant reduction in 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: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard Laufer, Acting.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: October 31, 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 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: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2 (SQN), Hamilton County, Tennessee

Date of amendment request: November 15, 2001 (TS–01–08).

Description of amendment request: The proposed amendment would increase the full core thermal power rating by 1.3 percent from 3411 MWt to 3455 MWt, based on planned installation of the improved Caldon, Incorporated (Caldon) Leading Edge Flow Meter, LEFM™ (LEFM) feedwater flow measurement instrumentation. This change affects Operating License Condition 2.C.(1) and Definition 1.26 for Rated Thermal Power. In addition, changes are necessary to the reactor power limits of Technical Specification (TS) Table 3.7.1 with an inoperable main steam safety valve for both units and, for Unit 2 only, the interval for which the pressure and temperature curves and the low temperature over pressure protection curves (TS Figures 3.4–2, 3.4–3, and 3.4–4) are valid. A change to the Bases for TS Section 3/4.7.1.1 is also included to address the changes in main steam safety valve capabilities.

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:

A. The proposed amendment does not 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 systems (NSSSs) 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 rod drive mechanism, loop piping and supports, reactor coolant pump, steam generator 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 rod control cluster assembly (RCCA) drop time remains within the current limits assumed in the accident analyses. Thus, there is no increase in the consequences of the accidents which credit RCCA drop. Several steam generator tubes may need to be plugged to preclude the potential for U-bend fatigue if the plant operates below certain steam pressure values. As long as these provisions are maintained, there is no increase in the probability of an steam generator tube rupture event. The leak before break analysis conclusions remain valid and thus the limiting break sizes determined in this analysis remain bounding.

All of the NSSS systems will continue to perform their intended design functions during normal and accident conditions. The pressurizer spray flow remains above its design value. Thus, the control system design analyses that credit the spray flow do not need to be modified for changes in this flow. The auxiliary systems and components continue to comply with 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/or balance of plant (BOP) interface systems will continue to perform their intended design functions. The steam generator safety valves will provide adequate relief capacity to maintain the steam generators within design limits. The steam dump system will still relieve 40 percent of the maximum full load steam flow. The current loss-of-coolant accident (LOCA) hydraulic forcing functions are still bounding. Thus, there is no significant increase in the probability of an accident previously evaluated.

The fuel has been completely analyzed to determine the effect of the 1.3 percent power uprate. The fuel assembly and fuel rod integrity have been evaluated. The change results in negligible changes to the hydraulic lift forces and the existing holddown margins remain acceptable. The increase in corrosion of the fuel assembly structural Zircaloy-4 components due to a slight increase in temperature is small, thus acceptable structural margin for normal operating, faulted, and handling conditions exist. The fuel assembly and fuel rod flow-induced vibration (FIV) performance remains acceptable. The existing fuel assembly faulted condition loading and analysis remain applicable and acceptable. The fuel rod strain, creep collapse, and corrosion performance were evaluated at the higher power level with acceptable results.

The fuel cycle design was evaluated and there was no significant effect caused by the 1.3 percent power uprate. The operational analysis of the core was evaluated for the change and found to remain applicable with acceptable results.

The thermal-hydraulic analysis was evaluated and found to remain applicable. The safety analysis addressed all Condition II, III, and IV events with the conclusion that current analyses remain applicable or bounding. The radiological consequences were evaluated and determined to be bounded by current analyses.

Additionally, the current licensing basis steamline break and LOCA mass and energy releases that are used to determine the peak containment pressure and temperature limits continue to remain bounding with the increase in power. Thus, there is no significant increase in the consequences of an accident previously evaluated.

The heatup and cooldown curves for Unit 2 are now applicable for 14.5 EFPY [effective full-power year] instead of 16 EFPY. The heatup and cooldown curves define limits that still ensure the prevention of nonductile failure for the SQN Units 1 and 2 reactor coolant system (RCS). The design-basis events that were protected have not changed. This modification does not alter any assumptions previously made in the radiological consequence evaluations nor affect mitigation of the radiological consequences of an accident described in the Updated Final Safety Analysis Report. Therefore, the proposed changes will not significantly increase the probability or consequences of an accident previously evaluated.

The revised requirements for inoperable MSSVs [main steam safety valves] provide limits for the power range high flux trip

setpoint that ensure adequate relief capability for postulated accidents. This change does not alter any plant systems, components, or operating methods. Since the plant will continue to operate in the same manner with the same protective features, this change will not increase the possibility of an accident. The revised setpoint is a conservative change that provides additional margin considering the effect of the proposed power uprate. Since the revised setpoint continues to provide an equivalent level of safety function, this change will not significantly increase the consequences of an accident and the offsite dose impact will not be significantly increased.

B. The proposed amendment does not 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. All systems, structures, and components previously required for the mitigation of an event remain capable of fulfilling their intended design function. 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, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

Operation at the 3455 MWt core power does not involve a significant reduction in a margin of safety. Extensive 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 regulatory acceptance criteria. The reduction in the EFPY for the Unit 2 heatup and cooldown curves does not reduce the margin of safety since the curves define the limits for ensuring the prevention of nonductile failure for the RCS and these curves remain unchanged.

The pressure and temperature safety limits will be the same as those for the current operating cycle, thus ensuring that the fuel will be maintained within the same range of safety parameters that form the basis for the Final Safety Analysis Report (FSAR) accident evaluations.

The power uprate represents a small increase in the energy production for the fuel cycle and is well within typical variations that occur as a result of increases in cycle length and capacity factor. The burnup of the fuel will increase proportionally with the increase in power, but will not challenge the current licensed burnup limit for Mark-BW fuel.

The slight increase in core average linear heat rate will result in a slight loss of operating margin, but will not affect safety margins. The centerline fuel melt and transient cladding strain limits will not be affected by the power level uprate, but the margin to these limits will decrease slightly. The LOCA FQ [power peaking factor] limits will not be altered since the increase in core power is absorbed by reducing the power uncertainty used in determination of the limits.

The power peaking limits that provide DNB [departure from nucleate boiling] protection are slightly lower resulting in a proportional loss in DNB margins. The mechanical evaluation of the fuel demonstrates that the power level uprate can be successfully accomplished in compliance with all design criteria.

All FSAR Chapter 15 events have been evaluated and found to remain applicable for the power uprate. The radiological consequences analyses include an initial power assumption of 105 percent of 3411 MWt and remain bounding for the 1.3 percent power uprate.

The more restrictive limits for the power range high flux trip setpoint is based on calculations that ensure sufficient relief capacity to meet accident mitigation requirements. This change will appropriately limit reactor power levels, with inoperable MSSVs, such that the margin of safety is maintained at an equivalent level considering the proposed power uprate.

As appropriate, all evaluations have been performed using methods that have either been reviewed and approved by the NRC or that are in compliance with all applicable regulatory review guidance and standards. All of the fuel and safety evaluations for the 1.3 percent power uprate were performed with the Framatome-ANP approved methodology listed in TS Section 6.9.1.14 of the SQN TSs. Therefore, it is concluded that 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: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request October 31, 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 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: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: November 13, 2001.

Description of amendment request: The proposed amendment would revise the Watts Bar Nuclear Unit 1 (WBN) Technical Requirements Manual to add two new sections, TR 3.7.6, ''Shutdown Board Room (SDBR) Air Conditioning System (ACS),'' and TR 3.7.7, ''Elevation 772.0 480 Volt Board Room Air Conditioning (AC) Systems.'' Each section provides specific actions and associated completion times for various out-of-service conditions associated with the safety-related air conditioning 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:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to the WBN Technical Requirements Manual (TRM) will provide formalized operational guidance for coping with partial or complete unavailability of shut down board room (SDBR) and 480V board room air conditioning (AC) equipment for limited periods of time. The change does not impact the frequency of an accident because failure of either the SDBR or the 480V board room AC systems is not an initiator of any accident scenario. The change does not modify any plant hardware including the air conditioning systems, and none of their automatic control features or redundant systems currently credited in failure analyses are being deleted, modified, or otherwise replaced by operator actions as a result of the proposed change.

The proposed TRM revision changes current plant operating practice and WBN Final Safety Analysis Assumptions (FSAR) assumptions by allowing continued power operation with both trains of SDBR air conditioning concurrently inoperable and two 480V board room AC systems of the same unit to be concurrently inoperable for a limited duration, up to 12 hours. This condition is acceptable based on the low probability of the occurrence of postulated accidents resulting in core damage concurrent with multiple inoperable systems or trains of cooling equipment during this timeframe, and based on analyses which demonstrate that peak temperatures in each room served by these systems remain below mild environment temperature limits during this time period. Consequently, there is no significant adverse impact on the ability of required safety-related electrical equipment to continue to operate and perform their required functions, during both normal operation and during design basis events. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not modify any plant hardware including the subject air conditioning systems. The change provides specific operational guidance for coping with partial or complete unavailability of shut down board room and 480V board room air conditioning equipment. No new accident or event initiators are created by allowing multiple air conditioning systems to be unavailable for the limited time period of 12 hours. The supported electrical equipment remains capable of performing its intended function both during normal operations and post accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed TRM revision changes current FSAR assumptions by allowing continued power operation with both trains of SDBR air conditioning concurrently inoperable and allowing two 480V board room air conditioning systems of the same unit to be inoperable for a limited duration, up to 12 hours. This condition does not significantly reduce the margin of safety due to the low probability of the occurrence of a postulated accident resulting in core damage concurrent with multiple inoperable systems or trains of cooling equipment during the limited time period. In addition, transient temperature analyses demonstrate that peak temperatures in each room served by these systems remain below mild environment temperature limits for a period of 24 hours assuming a complete loss of air conditioning to all rooms served by the SDBR and 480V board room AC systems concurrently. The analysis is bounding for normal operational

conditions. Consequently, there is no significant adverse impact on the ability of required safety-related electrical equipment to continue to operate and perform their required functions during both normal operation and during design basis events. 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: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: October 2, 2001.

Brief description of amendments: 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 Nuclear Station] 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 (TMI–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 Nuclear Regulatory Commission (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 2, 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, the emergency operating procedures, and site survey monitoring that support modification of emergency plan protective action recommendations.

Therefore, the elimination of PASS requirements from the TSs (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: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: October 25, 2001.

Brief description of amendments: The proposed amendment would revise Technical Specification (TS) 4.2.1, ''Fuel Assemblies,'' for Comanche Peak Steam Electric Station (CPSES) Units 1 and 2 to allow the use of ZIRLO™ test assemblies and to further allow, '' * * * A limited number of lead test assemblies * * * be placed in non-limiting core 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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Changing the technical specifications within limits of the bounding accident analyses cannot change the probability of an accident previously evaluated, nor will it increase radiological consequences predicted by the analyses of record. Controlling the use of lead test assemblies according to limitations approved by the NRC [Nuclear Regulatory Commission] constrains fuel performance within limits bounded by existing design basis accident and transient analyses.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Inclusion in the reactor core of lead test assemblies according to limitations set by the NRC for lead test assemblies and of a design approved by the NRC ensures that their effect on core performance remains within existing design limits. Use of fuel assemblies whose design has been previously approved by the NRC as lead test assemblies is consistent with current plant design bases, does not adversely affect any fission product barrier, and does not alter the safety function of safety significant systems, structures and components or their roles in accident prevention or mitigation. Currently licensed design basis accident and transient analyses of record remain valid.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter the manner in which Safety Limits, Limiting Safety System Setpoints, or Limiting Conditions for Operation are determined. This proposed clarification of TS 4.2.1 is bounded by existing limits on reactor operation. It leaves current limitations for use of lead test assemblies in place, conforms to plant design bases, is consistent with current safety analyses, and limits actual plant operation within analyzed and licensed boundaries.

Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: November 8, 2001.

Brief description of amendments: The amendments would add the following to the Technical Specifications (TSs) for Comanche Peak Steam Electric Station (CPSES): (1) the phrase, ''* * * or if open, capable of being closed * * *'' to the TS Limiting Condition for Operation 3.9.4 for the equipment hatch, during core alterations or movement of irradiated fuel assemblies inside containment; and (2) the requirement to verify the capability to install the equipment hatch in a new Surveillance Requirement (SR) 3.9.4.2. Nothing is proposed to be deleted from the TSs. Existing SR 3.9.4.2 would be renumbered SR 3.9.4.3, but would not otherwise be changed. Item (1) will allow the equipment hatch to be open during the conditions stated above.

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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will allow the equipment hatch to be open during CORE ALTERATIONS and movement of irradiated fuel assemblies inside containment. The status of the equipment hatch during refueling operations has no affect on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a fuel handling accident inside containment with an open equipment hatch are bounded by the current analysis described in the FSAR [Final Safety Analysis Report] and the probability of an accident is not affected by the status of the equipment hatch, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not create any new failure modes for any system or component, nor do they adversely affect plant operation. No new equipment will be added and no new limiting single failures will be created. The plant will continue to be operated within the envelope of the existing safety analysis.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The previously determined radiological dose consequences for a fuel handling accident inside containment with the personnel air lock doors open remain bounding for the proposed changes. These previously determined dose consequences were determined to be well within the limits of 10 CFR [Part] 100 and they meet the acceptance criteria of SRP [Standard Review Plan] section 15.7.4 and GDC [General Design Criterion] 19.

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: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: November 7, 2001.

Description of amendment request: A change is proposed to Technical specification 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of '' * * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to '' * * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to the specification: ''A risk evaluation shall be performed for any Surveillance

delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, 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 September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated November 7, 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 proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an 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 proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

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 considerations.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: November 7, 2001 (ULNRC–04557).

Description of amendment request: The proposed amendment would revise Surveillance Requirements (SRs) 3.3.1.2 and 3.3.1.3 in the Technical Specifications (TSs) on reactor trip system (RTS) instrumentation. The proposed change to SR 3.3.1.2 would replace the reference to the nuclear instrumentation system (NIS) channel output by a reference to the power range channel output, and delete Note 1 to the SR. The change to SR 3.3.1.3 is editorial in nature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The RTS instrumentation will be unaffected. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the FSAR [Final Safety Analysis Report] are not adversely affected because the change to the NIS power range channel daily surveillance assures the conservative response of the channel even at part-power levels.

The proposed changes modify the NIS power range channel daily surveillance requirement to assure the NIS power range functions are tested in a manner consistent with the safety analysis and licensing basis.

The proposed changes will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed changes will not alter any assumptions or change any mitigation actions in the [accident] radiological consequence evaluations in the FSAR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating parameters. No performance requirements or response time limits will be affected; however, the proposed TS Bases changes impose explicit NIS power range high trip setpoint adjustment requirements prior to adjusting indicated power in a decreasing power direction. These requirements are consistent with assumptions made in the safety analysis and licensing basis.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes require a revision to the criteria for implementation of NIS power range channel adjustments based on secondary power calorimetric calculations; however, the changes do not eliminate any RTS surveillances or alter the frequency of surveillances required by the Technical Specifications. The revision to the criteria for implementation of the daily surveillance will have a conservative effect on the performance of the NIS power range channels, particularly at part-power conditions. The nominal trip setpoints specified in the Technical Specification Bases and the safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis is changed.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor (FΔH), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

The imposition of appropriate surveillance testing requirements will not reduce any margin of safety since the changes will assure that safety analysis assumptions on equipment operability are verified on a periodic frequency.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Virginia Electric and Power Company, Docket No. 50–280, Surry Power Station, Unit No. 1, Surry County, Virginia

Date of amendment request: October 15, 2001, as supplemented November 8, 2001.

Description of amendment request: The proposed amendment would revise Technical Specifications Section 4.4. The proposed changes would permit a one-time 5-year extension of the 10-year performance-based Type A test interval established in NEI 94–01, ''Nuclear Energy Institute Industry Guideline for Implementing Performance-Based Option of 10 CFR Part 50, Appendix J,'' Revision 0, July 26, 1995.

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?

The proposed extension to Type A testing cannot increase the probability of an accident previously evaluated since extension of the containment Type A testing is not a physical plant modification that could alter the probability of accident occurrence nor, is an activity or modification by itself that could lead to equipment failure or accident initiation.

The proposed extension to Type A testing does not result in a significant increase in the consequences of an accident as documented in NUREG–1493. The NUREG notes that very few potential containment leakage paths are not identified by Type B and C tests. It concludes that reducing the Type A (ILRT) testing frequency to once per twenty years leads to an imperceptible increase in risk.

Surry provides a high degree of assurance through indirect testing and inspection that the containment will not degrade in a manner detectable only by Type A testing. The last two Type A tests identified containment leakage within acceptance criteria, indicating a very leak-tight containment. Inspections required by the ASME Code are also performed in order to identify indications of containment degradation that could affect leak-tightness. Also, maintaining the containment subatmospheric during operations provides constant monitoring of the leaktightness of the containment structure. Separately, Type B and C testing, required by Technical Specifications, identifies any containment opening from design penetrations, such as valves, that would otherwise be detected by a Type A test. These factors establish that an extension to the Surry Type A test interval will not represent a significant increase in the consequences of an accident.

2. *Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?*

The proposed revision to Technical Specifications adds a one-time extension to the current interval for Type A testing for Surry Unit 1. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test. The proposed extension to Type A testing does not create the possibility of a new or different type of accident since there are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure.

3. *Does the proposed amendment involve a significant reduction in a margin of safety?*

The proposed revision to Surry Technical Specifications adds a one-time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test for Surry Unit 1. The proposed extension to Type A testing will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year interval in Type A leakage testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes about 0.1 percent of the overall risk and that decreasing the Type A testing frequency would have a minimal [effect] on this risk since 95% of the Type A detectable leakage paths would already be detected by Type B and C testing. In addition, the risk impact on the total integrated (fifteen year total) Surry Unit 1 plant risk above baseline, for those accident sequences influenced by Type A testing, is only 0.004%. Furthermore, for Surry, maintaining the containment subatmospheric during plant operations further reduces the risk of any containment leakage path going undetected.

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: 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: May 31, 2001 as supplemented October 17, 2001.

Description of amendment request: The proposed changes would revise the Technical Specifications and associated Bases to provide a separate allowed outage time for the backup air supply for the pressurizer power-operated relief valves (PORVs).

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:

Dominion has reviewed the requirements of 10 CFR 50.92 as they relate to the proposed change for Surry Units 1 and 2 and determined that a significant hazards consideration is not involved. The following is provided to support this conclusion.

1. *Does the change involve a significant increase in the probability or consequences of an accident previously evaluated.*

The proposed change does not introduce any new mechanisms for the initiation of transients or accidents or for the failure of equipment relied upon in the accident analyses to mitigate the consequences of accidents. The impact of the proposed change on the availability and reliability of the pressurizer PORVs is negligible. Therefore the accident analysis results and conclusions remain bounding.

2. *Does the change create the possibility of a new or different kind of accident from any accident previously evaluated.*

There are no modifications to the plant as a result of the changes. No new accident or event initiators are created by changing the required actions for various conditions of PORV inoperability. The proposed change will not introduce any new equipment failure modes that could initiate accidents or change the analysis results presented in the UFSAR [Updated Final Safety Analysis Report].

3. *Does the change involve a significant reduction in a margin of safety.*

The proposed change will not alter the limiting results of the safety analyses presented in Chapter 14 of the UFSAR. Provision of an allowed outage time for the pressurizer PORV backup air system and of more condition specific and appropriate actions for various types of PORV inoperability has an insignificant impact on the availability and reliability of the PORVs for performing their safety related functions.

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: 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 e-mail to *pdr@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: July 26, 2001.

Brief description of amendments: The amendments modify Technical Specifications 5.5.14.b and 5.5.14.b.2, Technical Specification Bases Control Program, such that they are consistent with Title 10 of the Code of Federal Regulations (10 CFR 50.59).

Date of issuance: November 21, 2001.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 247 and 222.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 5, 2001 (66 FR 46475) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated November 21, 2001.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: April 19, 2001.

Brief description of amendment: The amendment changes the River Bend Station Technical Specifications (TSs) to allow an increase in the number of spent fuel assemblies (SFAs) to be stored in the spent fuel pool from the current TS limit of 2680 SFAs to 3104 SFAs.

Date of issuance: November 19, 2001.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 123.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 18, 2001 (66 FR 52948) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 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: July 23, 2001, as supplemented by letter dated October 25, 2001.

Brief description of amendment: The change deletes Technical Specification

(TS) 3.9.12, ''Fuel Handling Building Ventilation System,'' and TS 3.3.3.1 Surveillance Requirements for the Fuel Storage Pool area radiation monitors.

Date of issuance: November 21, 2001.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 176.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44169). The October 25, 2001, supplement contained clarifying information that did not change the scope of the July 23, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 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: August 22, 2001.

Brief description of amendments: The amendments revise the Technical Specifications for St. Lucie Units 1 and 2 to allow small, controlled, safe insertions of positive reactivity while in shutdown modes.

Date of Issuance: November 19, 2001.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 179 and 122.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 19, 2001 (66 FR 48287).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 19, 2001.

No significant hazards consideration comments received: No.

GPU Nuclear Inc., Docket No. 50–320, Three Mile Island Nuclear Station, Unit 2, Dauphin County, Pennsylvania

Date of amendment request: June 21, 2001.

Brief description of amendment request: The amendment revises Three Mile Island Nuclear Station, Unit 2 Technical Specifications Administrative Controls section to provide consistency with the changes to the revised subsection 50.59 of Title 10 of the Code of Federal Regulations, as published in the **Federal Register** on October 4, 1999 (64 FR 53582).

Date of issuance: November 28, 2001

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 57.

Facility Operating License No. DPR–73: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55020).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 2001.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, BerrienCounty, Michigan

Date of application for amendments: May 15, 2001.

Brief description of amendments: The amendments change TS 3/4.8.2.2, ''A. C. Distribution Shutdown,'' TS 3/4.8.2.4 ''D. C. Distribution—Shutdown,'' and TS 3/4.9.4, ''Containment Building Penetrations.'' The proposed amendments replaces the current required actions in TSs 3/4.8.2.2. and 3/4.8.2.4, to establish containment integrity within 8 hours if less than the specified minimum complement of A.C. or D.C. busses and equipment is operable in Modes 5 and 6 with new actions which require to immediately suspend operations involving core alterations, positive reactivity changes, and movement of irradiated fuel assemblies, to immediately initiate actions to restore the required busses and return equipment to operable status, and to immediately declare the associated required residual heat removal loop(s) inoperable. The proposed new actions are consistent with NUREG—1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1.

In addition, the proposed amendments will change TS 3/4.9.4 to add options to use containment penetration closure methods that are equivalent to those that are currently required by the TSs during core alterations or movement of irradiated fuel in containment, and to allow unisolation of some penetrations under administrative control.

Date of issuance: November 21, 2001.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 259 and 242.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 12, 2001 (66 FR 31709).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 21, 2001.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: October 8, 2001.

Brief description of amendments: The amendments revised the Technical Specifications to allow the main control room boundary to be opened intermittently under administrative controls and to allow 24 hours to restore the main control room boundary to Operable status before requiring the plant to perform an orderly shutdown.

Date of issuance: November 26, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 225 and 168.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 26, 2001 (66 FR 54301).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 26, 2001.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: September 7, 2001 (TS 01–09).

Brief description of amendment: The amendment revised Technical Specifications (TS) Section 3.6.11, ''Ice Bed,'' Surveillance Requirement (SR) 3.6.11.2, SR 3.6.11.3, and the associated Bases, to lower the minimum average ice basket weight from 1236 pounds to 1110 pounds.

Date of issuance: November 29, 2001.

Effective date: As of the date of its issuance and shall be implemented no later than Mode 4 during startup from Cycle 4 refueling outage.

Amendment No.: 33.

Facility Operating License No. NPF–90: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 17, 2001 (66 FR 52804).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 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 3rd of December, 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–30455 Filed 12–11–01; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 60 days of publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

Summary of Form Under Review

Type of Request: Form Amendment.

Title: Application for Political Risk Investment Insurance.

Form Number: OPIC–52.

Frequency of Use: Once per investor, per project.

Type of Respondents: Business or other institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies investing overseas.

Reporting Hours: 6½ hours per project.

Number of Responses: 150 per year.

Federal Cost: $24,300 per year.

Authority for Information Collection: Sections 231 and 234(a) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC 52 form is the principal document used by OPIC to determine the investor's and the project's eligibility, assess the environmental impact and development effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: December 6, 2001.

Rumu Sarkar,

Assistant General Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 01–30657 Filed 12–11–01; 8:45 am]

BILLING CODE 3210–01–M

RAILROAD RETIREMENT BOARD

2002 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 8(c)(2) and section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(2) and 45 U.S.C. 362(r)(3), respectively), the Board gives notice of the following:

1. The balance to the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 2001, is $53,029,889.30;
2. The September 30, 2001, balance of any new loans to the RUI Account, including accrued interest, is zero;
3. The system compensation base is $3,095,486,497.55 as of June 30, 2001;
4. The cumulative system unallocated charge balance is ($236,829,145.06) as of June 30, 2001;
5. The pooled credit ratio for calendar year 2002 is zero;
6. The pooled charged ratio for calendar year 2002 is zero;
7. The surcharge rate for calendar year 2002 is 2.5 percent;
8. The monthly compensation base under section 1(i) of the Act is $1,100 for months in calendar year 2002;
9. The amount described in section 1(k) of the Act as ''2.5 times the monthly compensation base'' is $2,750 for base year (calendar year) 2002;
10. The amount described in section 2(c) of the Act as ''an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600'' is $1,421 for months in calendar year 2002;
11. The amount described in section 3 of the Act as ''2.5 times the monthly compensation base'' is $2,750 for base year (calendar year) 2002;
12. The amount described in section 4(a–2)(i)(A) of the Act as ''2.5 times the monthly compensation base'' is $2,750 with respect to disqualifications ending in calendar year 2002;
13. The maximum daily benefit rate under section 2(a)(3) of the Act is $52 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 2002.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 2001. The balance in notice (2) is based on data as of September 30, 2001. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 2002. The determinations made in notices (8) through (12) are effective January 1, 2002. The determination made in notice (13) is effective for registration periods beginning after June 30, 2002.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marla L. Huddleston, Bureau of the Actuary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092, telephone (312) 751–4779.

SUPPLEMENTARY INFORMATION: The RRB is required by section 8(c)(1) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)) as amended by Public Law 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The RRB is further required by section 8(c)(2) of the Act (45 U.S.C. 358(c)(2)) to publish the amounts so determined and proclaimed.

The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 2001, the computation of the calendar year 2002 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 2002, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 2002.

Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is less than the greater of $100 million or the amount that bears the same ratio to $100 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the RUI Account balance is less than $100 million (as indexed), but at least $50 million (as indexed), the surcharge will be 1.5 percent. If the RUI Account balance is less than $50 million (as indexed), but greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The system compensation base as of June 30, 1991 was $2,763,287,237.04. The system compensation base for June 30, 2001 was $3,095,486,497.55. The ratio of $3,095,486,497.55 to $2,763,287,237.04 is 1.12021887. Multiplying 1.12021887 by $100 million yields $112,021,887. Multiplying $50 million by 1.12021887 produces $56,010,944. The Account balance on June 30, 2001, was $53,029,889.30. Accordingly, the surcharge rate for calendar year 2002 is 2.5 percent.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 2002 shall be equal to the greater of (a) $600 or (b) $600 [1 + {(A—37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 2002 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 2002 tier 1 tax base is $84,900. Subtracting $37,800 from $84,900 produces $47,100. Dividing $47,100 by $56,700 yields a ratio of 0.83068783. Adding one gives 1.83068783. Multiplying $600 by the amount 1.83068783 produces the amount of $1,098.41, which must then be rounded to $1,100. Accordingly, the monthly compensation base is determined to be $1,100 for months in calendar year 2002.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 2002 monthly compensation base of $1,100 produces $2,750. Accordingly, the amount determined under section 1(k) is $2,750 for calendar year 2002.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account. The calendar year 2002 monthly compensation base is $1,100. The ratio of $1,100 to $600 is 1.83333333. Multiplying 1.83333333 by $775 produces $1,421. Accordingly, the amount determined under section 2(c) is $1,421 for months in calendar year 2002.

Under section 3, an employee shall be a ''qualified employee'' if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 2002 monthly compensation base of $1,100 produces $2,750. Accordingly, the amount determined under section 3 is $2,750 for calendar year 2002.

Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 2002 monthly compensation base of $1,100 produces $2,750. Accordingly, the amount determined under section 4(a–2)(i)(A) is $2,750 for calendar year 2002.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2002, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

The calendar year 2001 monthly compensation base is $1,050. Multiplying $1,050 by 0.05 yields $52.50, which must then be rounded down to $52. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2002, is determined to be $52.

Dated: November 13, 2001.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 01–30670 Filed 12–11–01; 8:45 am]

BILLING CODE 7905–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25310; File No. 812–12628]

Jackson National Life Insurance Company, et al.; Notice of Application

December 5, 2001.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting exemptions from the

provisions of sections 2(a)(32) and 27(i)(2)(A) of the Act and rule 22c–1 thereunder to permit the recapture of contract enhancements applied to purchase payments made under certain flexible premium, deferred variable annuity contracts.

Applicants: Jackson National Life Insurance Company (''Jackson National''), Jackson National Separate Account—I (the ''JNL Separate Account''), Jackson National Life Insurance Company of New York (''JNL New York,'' and collectively with Jackson National, the ''Insurance Companies''), JNLNY Separate Account I (the ''JNLNY Separate Account,'' and collectively with JNL Separate Account, the ''Separate Accounts''), and Jackson National Life Distributors, Inc. (''Distributor,'' collectively with the Insurance Companies and Separate Accounts, ''Applicants'').

Summary of Application: Applicants seek an order under section 6(c) of the Act to the extent necessary to permit the recapture, under specified circumstances, of certain contract enhancements applied to purchase payments made under the flexible premium, deferred variable annuity contract described herein that Jackson National will issue through the JNL Separate Account (the ''JNL Contract'') and that JNL New York will issue through the JNLNY Separate Account (the ''JNLNY Contract,'' and collectively with the JNL Contract, the ''Contract(s)''), as well as other contracts that the Insurance Companies may issue in the future through their existing or future separate accounts (''Other Accounts'') that are substantially similar in all material respects to the Contracts (''Future Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, Jackson National, whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts or Future Contracts (''Affiliated Broker-Dealers''), and any successors in interest to the Applicants.

Filing Date: The Application was filed on September 4, 2001 and amended on October 9, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 27, 2001, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Susan Rhee, Esq., Jackson National Life Insurance Company, 1 Corporate Way, Lansing, Michigan 48951; copies to W. Randolph Thompson, Esq., Jorden Burt LLP, 1025 Thomas Jefferson Street, NW, Suite 400 East, Washington, DC 20007–0805.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, at (202) 942–0552, or Keith E. Carpenter, Branch Chief, at (202) 942–0679, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 ((202) 942–8090).

Applicants' Representations

1. Jackson National is a stock life insurance company organized under the laws of the state of Michigan in June 1961. Its legal domicile and principal business address is 1 Corporate Way, Lansing, Michigan 48951. Jackson National is admitted to conduct life insurance and annuity business in the District of Columbia and all states except New York. Jackson National is ultimately a wholly-owned subsidiary of Prudential plc (London, England).

2. JNL New York is a stock life insurance company organized under the laws of the state of New York in July 1995. Its legal domicile and principal address is 2900 Westchester Avenue, Purchase, New York 10577. JNL New York is admitted to conduct life insurance and annuity business in Delaware, Michigan and New York. JNL New York is ultimately a wholly-owned subsidiary of Prudential plc (London, England).

3. The JNL Separate Account was established by Jackson National on June 14, 1993, pursuant to the provisions of Michigan law and the authority granted under a resolution of Jackson National's Board of Directors. The JNLNY Separate Account was established by JNL New York on September 12, 1997, pursuant to the provisions of New York law and the authority granted under a resolution of JNL New York's Board of Directors. Jackson National and JNL New York each is the depositors of its respective Separate Account. Each of the Separate Accounts meets the definition of a ''separate account'' under the federal securities laws and each is registered with the Commission as a unit investment trust under the Act (File Nos. 811–08664 and 811–08401, respectively). JNL Separate Account and JNLNY Separate Account will fund, respectively, the variable benefits available under the JNL Contracts and the JNLNY Contracts. The offering of the Contracts will be registered under the Securities Act of 1933 (the ''1933 Act'').

4. The Distributor is a wholly-owned subsidiary of Jackson National and serves as the distributor of the Contracts. The Distributor is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and is a member of the NASD. The Distributor enters into selling group agreements with affiliated and unaffiliated broker-dealers. The Contracts are sold by licensed insurance agents, where the Contracts may be lawfully sold, who are registered representatives of broker-dealers which are registered under the 1934 Act and are members of the NASD.

5. The Contracts require a minimum initial premium payment of $5,000 under most circumstances ($2,000 for a qualified plan contract). Subsequent payments may be made at any time during the accumulation phase. Each subsequent payment must be at least $500 ($50 under an automatic payment plan). Prior approval by the relevant Insurance Company is required for aggregate premium payments of over $1,000,000.

6. The JNL Contracts permit owners to accumulate contract values on a fixed basis through allocations to one of seven fixed accounts (the ''Fixed Accounts''), including four ''Guaranteed Fixed Accounts'' which offer guaranteed crediting rates for specified periods of time (currently, 1, 3, 5, or 7 years), two ''DCA Fixed Accounts'' (used in connection with dollar cost averaging transfers, one of which, the DCA+ Fixed Account, from time to time offers special crediting rates) and an ''Indexed Fixed Option'' (with a minimum guaranteed return and additional possible returns based on the performance of the S&P 500 Index).

7. The JNLNY Contracts permit owners to accumulate contract values on a fixed basis through allocations to one of four fixed accounts, including

four ''Guaranteed Fixed Accounts'' which offer guaranteed crediting rates for specified periods of time (currently, 1, 3, 5, or 7 years).

8. The Contracts also permit owners to accumulate contract values on a variable basis, through allocations to one or more of the investment divisions of the Separate Accounts (the ''Investment Divisions,'' collectively with the Fixed Accounts, the ''Allocation Options''). There are currently 34 (33 for JNLNY contracts) Investment Divisions expected to be offered under the Contracts, but additional Investment Divisions may be offered in the future and some of those listed could be eliminated or combined with other Investment Divisions in the future. Similarly, Future Contracts may offer additional or different Investment Divisions.

9. Transfers among the Investment Divisions are permitted. The first 15 transfers in a contract year are free; subsequent transfers cost $25. Certain transfers to, from and among the Fixed Accounts are also permitted during the Contracts' accumulation phase, but are subject to certain adjustments and limitations. Dollar cost averaging and rebalancing transfers are offered at no charge and do not count against the 15 free transfers permitted each year.

10. The Contracts offer certain optional endorsements that relate to withdrawals: (i) An endorsement that expands the percentage of premiums (that remain subject to a withdrawal charge) that may be withdrawn in a contract year with no withdrawal charge imposed from 10% to 20%; and (ii) an endorsement that reduces the withdrawal charges applicable under the Contract and shortens the period for which withdrawal charges are imposed from seven years to five years.

11. If one of the optional Contract Enhancement endorsements is elected, each time an owner makes a premium payment during the first contract year, Jackson National will add an additional amount to the owner's contract value (a ''Contract Enhancement''). All Contract Enhancements are paid from Jackson National's general account assets. The Contract Enhancement is equal to 2%, 3%, or 4% of the premium payment. A Contract Owner can choose only one of the Contract Enhancement endorsements. The 2% Contract Enhancement is offered only if the owner elects the optional five year withdrawal charge endorsement or the 20% additional free withdrawal endorsement. An owner may not elect the 3% or 4% Contract Enhancements if one of those two other optional endorsements is elected. The Insurance Companies will allocate the Contract Enhancement to the Guaranteed Accounts and/or Investment Divisions in the same proportion as the premium payment allocation. The Contract Enhancement is not credited to any premiums received after the first contract year.

12. There is an asset-based charge for each of the Contract Enhancements. The 2% Contract Enhancement has a 0.40% charge that applies for five years. The asset-based charges for the other Contract Enhancements apply for seven years and are 0.425% and 0.57%, respectively, for the 3% and 4% Contract Enhancements. These charges will also be assessed against any amounts you have allocated to the guaranteed accounts, resulting in a credited interest rate of 0.40%, 0.425%, and 0.57% for the 2%, 3%, and 4% contract enhancements, respectively, less than the annual credited interest rate that would apply to the guaranteed account if the contract enhancement had not been elected. However, the interest rate will never go below 3%.

13. The Insurance Companies will recapture all or a portion of any Contract Enhancements by imposing a recapture charge whenever an owner: (i) Makes a withdrawal of corresponding premium within the recapture charge period (five years after a first year payment in the case of the 2% Contract Enhancement and seven years after a first year payment in the case of the other Contract Enhancements) in excess of those permitted under the Contracts' free withdrawal provisions (including free withdrawals permitted by a 20% additional free withdrawal endorsement), unless the withdrawal is made for certain health-related emergencies specified in the Contracts (not all of which are available in the JNLNY contracts); (ii) elects to receive payments under an income option within the recapture charge period; or (iii) returns the Contract during the free look period.

14. The amount of the recapture charge varies, depending upon which Contract Enhancement is elected and when the charge is imposed, as follows:

CONTRACT ENHANCEMENT RECAPTURE CHARGE

[As a percentage of first year premium payments]

Completed years since receipt of premium	0 (percent)	1 (percent)	2 (percent)	3 (percent)	4 (percent)	5 (percent)	6 (percent)	7+ (percent)
Recapture Charge (2% Credit)	2	2	1.25	1.25	0.5	0	0	0
Recapture Charge (3% Credit)	3	3	2	2	2	1	1	0
Recapture Charge (4% Credit)	4	4	2.5	2.5	2.5	1.25	1.25	0

15. The recapture charge percentage will be applied to the corresponding premium reflected in the amount withdrawn or the amount applied to income payments that remains subject to a withdrawal charge. The amount recaptured will be taken from the Investment Divisions and the Guaranteed Accounts in the same proportion as the withdrawal charge.

16. Recapture charges will be waived upon death, but will be applied upon electing to commence income payments, even in a situation where the withdrawal charge is waived. Partial withdrawals will be deemed to remove premium payments on a first-in-first-out basis (the order that entails payment of the lowest withdrawal and recapture charges).

17. The Insurance Companies do not assess the recapture charge on any payments paid out as: death benefits; withdrawals necessary to satisfy the minimum distribution requirements of the Internal Revenue Code; if permitted by the owner's state, withdrawals of up to $250,000 from the Separate Account or from the Fixed Accounts other than the Indexed Fixed Option in connection with the owner's terminal illness or if the owner needs extended hospital or nursing home care as provided in the Contract; or if permitted by the owner's state, withdrawals of up to 25% of contract value (12.5% for each of two joint owners) in connection with certain serious medical conditions specified in the Contract.

18. The contract value will reflect any gains or losses attributable to a Contract Enhancement described above. Contract Enhancements, and any gains or losses attributable to a Contract Enhancement, distributed under the Contracts will be

considered earnings under the Contract for tax purposes and for purposes of calculating free withdrawal amounts.

19. The JNL Contracts have a ''free look'' period of ten (twenty for JNLNY Contracts) days after the owner receives the Contract (or any longer period required by state law). Contract value is returned upon exercise of free look rights by an owner unless state law requires the return of premiums paid. The Contract Enhancement recapture charge reduces the amount returned.

20. The Separate Accounts consist of sub-accounts, each of which will be available under the Separate Accounts. The sub-accounts are referred to as ''Investment Divisions.'' The Separate Accounts currently consist of the 34 (33 for JNLNY Contracts) Investment Divisions, and each will invest in Shares of a corresponding series (''Series'') of JNL Series Trust (''Trust'') or JNL Variable Fund LLC. Not all Investment Divisions may be available.

21. In addition to the Contract Enhancement charges and the Contract Enhancement recapture charges, the JNL Contracts have the following charges: mortality and expense risk charge of 1.00% (1.25% in the case of the JNLNY Contracts) (as an annual percentage of average daily account value); administration charge of 0.15% (as an annual percentage of average daily account value); contract maintenance charge of $35 per year ($30 per year in the case of the JNLNY Contracts) (waived if contract value is $50,000 or more at the time the charge is imposed); Earnings Protection Benefit charge of 0.30% (as an annual percentage of daily account value—only applies if related optional endorsement is elected); 20% additional free withdrawal benefit charge of 0.30% (as an annual percentage of daily account value—only applies if related optional endorsement is elected); five-year withdrawal charge period charge of 0.30% (as an annual percentage of daily account value—only applies if related optional endorsement is elected); optional death benefit charge of either 0.15% or 0.25% (as an annual percentage of daily account value—only applies if related optional endorsement is elected) depending upon which (if any) optional death benefit endorsement is elected; transfer fee of $25 for each transfer in excess of 15 in a contract year (for purposes of which dollar cost averaging and rebalancing transfers are excluded); commutation fee that applies only upon withdrawals from income payments for a fixed period, measured by the difference in values paid upon such a withdrawal due to using a discount rate of 1% greater than the assumed investment rate used in computing the amounts of income payments; and a withdrawal charge that applies to total withdrawals, partial withdrawals in excess of amounts permitted to be withdrawn under the Contract's free withdrawal provisions (or the 20% additional free withdrawal endorsement) and on the income date (the date income payments commence) if the income date is within a year of the date the Contract was issued.

22. The withdrawal charge for the JNL Contracts varies, depending upon the contribution year of the premium withdrawn as follows:

WITHDRAWAL CHARGE

[As a percentage of premium payments]

Completed years since receipt of premium	0 (percent)	1 (percent)	2 (percent)	3 (percent)	4 (percent)	5 (percent)	6 (percent)	7+ (percent)
Withdrawal Charge	8.5	8	7	6	5	4	2	0
Withdrawal Charge if Five-Year Period is elected	8	7	6	4	2	0	0	0

23. The withdrawal charge is waived upon withdrawals to satisfy the minimum distribution requirements of the Internal Revenue Code and, to the extent permitted by state law, the withdrawal fee is waived in connection with withdrawals of: (i) Up to $250,000 from the Investment Divisions or the Guaranteed Fixed Accounts of the Contracts in connection with the terminal illness of the owner of a Contract, or in connection with extended hospital or nursing home care for the owner; and (ii) up to 25% (12.5% each for two joint owners) of contract value (excluding values allocated to the Indexed Fixed Option) in connection with certain serious medical conditions specified in the Contract.

24. The JNLNY Contracts are identical to the JNL Contracts in the operation of Contract Enhancements, Contract Enhancement charges and Contract Enhancement recapture charges.

25. The withdrawal charges of the JNLNY Contracts are as follows:

WITHDRAWAL CHARGE

[As a percentage of premium payments]

Contribution Year of Premium Payment	1 (percent)	2 (percent)	3 (percent)	4 (percent)	5 (percent)	6 (percent)	7 (percent)	8+ (percent)
Withdrawal Charge	7	6	5	4	3	2	1	0
Withdrawal Charge if Five-Year Period is elected	6.5	5	3	2	1	0	0	0

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission pursuant to section 6(c) of the Act grant the exemptions requested below with respect to the Contracts and any Future Contracts funded by the Separate Accounts or Other Accounts that are issued by the Insurance Companies and underwritten or distributed by the Distributor or Affiliated Broker-Dealers. Applicants undertake that Future

Contracts funded by the Separate Accounts or Other Accounts, in the future, will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Subsection (i) of section 27 of the Act provides that section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines ''redeemable security'' as any security, other than short-term paper, under the terms of the which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the recapture of the Contract Enhancement in the circumstances set forth in this Application would not deprive an owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the amount of the Contract Enhancement allocated to his or her Contract value upon receipt of a premium payment is not fully vested until five or seven complete years following a premium. Until or unless the amount of any Contract Enhancement is vested, the Insurance Companies retain the right and interest in the Contract Enhancement amount, although not in the earnings attributable to that amount. Thus, Applicants urge that when the Insurance Companies recapture any Contract Enhancement they are simply retrieving their own assets, and because a Contract owner's interest in the Contract Enhancement is not vested, the Contract owner has not been deprived of a proportionate share of the Separate Account's assets, *i.e.,* a share of the Separate Account's assets proportionate to the Contract owner's contract value.

4. In addition, Applicants state that it would be patently unfair to allow a Contract owner exercising the free-look privilege to retain the Contract Enhancement amount under a Contract that has been returned for a refund after a period of only a few days. If the Insurance Companies could not recapture the Contract Enhancement, Applicants claim that individuals could purchase a Contract with no intention of retaining it and simply return it for a quick profit. Furthermore, Applicants state that the recapture of the Contract Enhancement relating to withdrawals or receiving income payments within the first five or seven years of a premium contribution is designed to protect the Insurance Companies against Contract owners not holding the Contract for a sufficient time period. According to Applicants, it would provide the Insurance Companies with insufficient time to recover the cost of the Contract Enhancement, to its financial detriment.

5. Applicants represent that it is not administratively feasible to track the Contract Enhancement amount in the Separate Accounts after the Contract Enhancement(s) is applied. Accordingly, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the Separate Accounts, including any Contract Enhancement amounts. As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the Contract owner's Contract value did not include any Contract Enhancement. The Insurance Companies nonetheless represent that the Contracts' fees and charges, in the aggregate, are reasonable in relation to service rendered, the expenses expected to be incurred, and the risks assumed by the Insurance Companies.

6. Applicants represent that the Contract Enhancement will be attractive to and in the interest of investors because it will permit owners to put 102%, 103% or 104% of their first-year premium payments to work for them in the Investment Divisions and Guaranteed Accounts. In addition, the owner will retain any earnings attributable to the Contract Enhancements recaptured, as well as the principal of the Contract Enhancement amount once vested.

7. Applicants submit that the provisions for recapture of any Contract Enhancement under the Contracts do not violate sections 2(a)(32) and 27(i)(2)(A) of the Act. Applicants assert that the application of a Contract Enhancement to premium payments made under the Contracts should not raise any questions as to compliance by the Insurance Companies with the provisions of section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from section 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Contract Enhancement under the circumstances described in the Application, without the loss of relief from section 27 provided by section 27(i).

8. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by section 22(a). Rule 22c–1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

9. It is possible that someone might view the Insurance Companies' recapture of the Contract Enhancements as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that the recapture of the Contract Enhancement does not violate Rule 22c–1. The recapture of some or all of the Contract Enhancement does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. To effect a recapture of a Contract Enhancement, the Insurance Companies will redeem interests in a Contract owner's Contract value at a price determined on the basis of the current net asset value of the Separate Accounts. The amount recaptured will be less than or equal to the amount of the Contract Enhancement that the Insurance Companies paid out of its general account assets. Although Contract owners will be entitled to retain any investment gains attributable to the Contract Enhancement and to bear any investment losses attributable to the Contract Enhancement, the amount of such gains or losses will be determined on the basis of the current net asset values of the Separate Accounts. Thus, no dilution will occur upon the

recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. Applicants assert that, because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Contract Enhancement, Rule 22c–1 should not apply to any Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c–1, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Contracts.

10. Applicants submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Investors would receive no benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in this Application.

Applicants further submit, for the reasons stated herein, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30649 Filed 12–11–01; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25311; File No. 812–12566]

First Allmerica Financial Life Insurance Co., et al.; Notice of Application

December 5, 2001.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of an Application for an order pursuant to section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'') approving the proposed substitutions of securities and pursuant to section 17(b) of the Act exempting related transactions from section 17(a) of the Act.

Applicants: First Allmerica Financial Life Insurance Company (''First Allmerica''), Fulcrum Separate Account of First Allmerica Financial Life Insurance Company (the ''First Allmerica Separate Account''), Allmerica Financial Life Insurance and Annuity Company (''Allmerica Financial Life''), Fulcrum Separate Account of Allmerica Financial Life Insurance and Annuity Company (the ''Allmerica Financial Life Separate Account''), Allmerica Investment Trust (''AIT''), The Fulcrum Trust (''Fulcrum''), and Gabelli Capital Series Funds, Inc. (''Gabelli'') (collectively, the ''Applicants'').

Summary of Application: Applicants request an order approving the substitution of shares of three series of AIT and one series of Gabelli for shares of series of Fulcrum held by the First Allmerica Separate Account and the Allmerica Financial Life Separate Account to support variable life insurance contracts or variable annuity contracts (collectively, the ''Variable Contracts'') issued by First Allmerica or Allmerica Financial Life. Applicants also request an order exempting them from section 17(a) of the 1940 Act to the extent necessary to permit the Applicants to, by means of in-kind redemptions and purchases, carry out the above-referenced substitutions of securities.

Filing Date: The application was filed on July 3, 2001 and amended and restated on December 4, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 27, 2001, and be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Richard M. Reilly, President, Allmerica Financial Life, 440 Lincoln Street, Worcester, MA 01653, and copy to George M. Boyd, Esq., First Allmerica, Office of the General Counsel, N–440, 440 Lincoln Street, Worcester, MA 01653.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Fang, Attorney, or Keith E. Carpenter, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. First Allmerica was organized under the laws of Massachusetts in 1844. Effective October 16, 1995, First Allmerica converted from a mutual life insurance company known as State Mutual Life Assurance Company of America to a stock life insurance company and adopted its present name. First Allmerica is a wholly-owned subsidiary of Allmerica Financial Corporation (''AFC'').

2. Allmerica Financial Life is a life insurance company organized under the laws of Delaware in July 1974. Allmerica Financial Life is an indirect, wholly-owned subsidiary of First Allmerica, which in turn is a wholly-owned subsidiary of AFC.

3. The First Allmerica Separate Account and the Allmerica Financial Life Separate Account (the ''Applicant Separate Accounts'') are separate accounts for which either First Allmerica or Allmerica Financial Life (the ''Applicant Insurance Companies'') serves as sponsor and depositor. First Allmerica serves as sponsor and depositor of the First Allmerica Separate Account. Allmerica Financial Life serves as sponsor and depositor of the Allmerica Financial Life Separate Account.

4. Each of the two Applicant Separate Accounts is a segregated asset account of the indicated Applicant Insurance Company, and each is registered under the 1940 Act as a unit investment trust. Each of the respective Applicant Separate Accounts is used by the Applicant Insurance Company of which it is a part to fund certain variable annuity or variable life contracts. Certain sub-accounts of the respective Applicant Separate Accounts are

dedicated to owning shares of one of the investment portfolios of Fulcrum. Accordingly, each Fulcrum sub-account reflects the investment performance of that portfolio of Fulcrum in which the sub-account invests.

5. Each Applicant Separate Account is administered and accounted for as part of the general business of the Applicant Insurance Company of which it is a part. The income, gains or losses (realized or unrealized) of each Applicant Separate Account are credited to or charged against the assets of that Separate Account, without regard to income, gains or losses of such Applicant Insurance Company. Each Applicant Separate Account is a ''separate account'' as defined by the 1940 Act.

6. Each of the Applicant Separate Accounts serves as a funding vehicle for certain Variable Contracts. As the Variable Contracts are currently structured, holders of any of the Variable Contracts (''Contractholders'') may select one or more of the investment options available under the Variable Contract held by allocating premiums payable under such contract to that sub-account of the relevant Applicant Separate Account that corresponds to the investment option desired. Thereafter, Contractholders accumulate funds, on a tax-deferred basis, based on the investment experience of the selected sub-account(s). Contractholders may, during the life of the contract, make unlimited transfers of accumulation values among the sub-accounts available under the Variable Contract held. Depending on the type of Variable Contract, the first six or twelve transfers in a contract year are guaranteed to be free of any transfer charge.

7. AIT is registered under the 1940 Act as an open-end diversified investment company and currently consists of 14 different Funds, three of which, the Select Capital Appreciation Fund (''SCAF''), the Select International Equity Fund (''SEIF'') and the Select Growth and Income Fund (''SGIF'') are involved in the proposed substitution. Currently shares of each Fund are purchased only by the separate accounts established by First Allmerica or Allmerica Financial Life for the purpose of funding variable annuity contracts and variable life insurance policies.

8. Allmerica Financial Investment Management Services, Inc. (''AFIMS'' and/or the ''Manager'') serves as the investment adviser to AIT. AFIMS is an indirect, wholly-owned, subsidiary of AFC and maintains its principal offices at 440 Lincoln Street, Worcester, Massachusetts 01653. Under the terms of a management agreement between AIT and AFIMS (the ''Management Agreement''), AFIMS manages AIT's business affairs and has general responsibility for the management of the investments of the Funds, subject to the control of the Board of Trustees of AIT.

9. AFIMS, at its expense, has contracted with investment sub-advisers to manage the investments of the Funds. T. Rowe Price Associates, Inc., (''T. Rowe Price''), 100 East Pratt Street, Baltimore, MD 21202, serves as sub-adviser for SCAF. Bank of Ireland Asset Management (U.S.) Ltd. (''Bank of Ireland''), 26 Fitzwilliam Place, Dublin 2, Ireland and 75 Holly Hill Lane, Greenwich, CT 06830, serves as sub-adviser for SIEF. J.P. Morgan Investment Management Inc. (''J.P. Morgan''), 522 Fifth Avenue, New York, NY 10036, serves as sub-adviser for SGIF.

10. AFIMS is responsible for the payment of all fees to the sub-advisers. Other than the expenses specifically assumed by AFIMS under the Management Agreement, all expenses incurred in the operation of AIT are borne by AIT. For its services, AFIMS is entitled to receive a fee from each Fund of AIT, based on the average daily net asset value of each Fund. In addition, AFIMS has voluntarily undertaken to reimburse each Fund for its fees and expenses that exceed the applicable expense limitation set for that Fund. AFIMS has declared voluntary expense limitations of 1.35% for SCAF, 1.50% for SIEF and 1.10% for SGIF of each Fund's average daily assets through December 31, 2001. The expense limitations may be removed at any time after a Fund's first fiscal year of operations with notice to existing shareholders. Actual expenses have been well below such expense limitations for the three Funds.

11. Fulcrum is registered under the 1940 Act as an open-end diversified investment company and currently consists of four different portfolios, all of which, are involved in the proposed substitution. They are the Global Interactive/Telecomm Portfolio (''GITP''), the International Growth Portfolio (''IGP''), the Growth Portfolio (''GP'') and the Value Portfolio (''VP''). Currently, shares of the Portfolios may be sold only to: (a) Life insurance company separate accounts to serve as the underlying investment medium for variable annuity and variable life insurance contracts; (b) qualified retirement plans, as permitted by Treasury Regulations; and (c) life insurance companies and advisers to the Portfolios and their affiliates.

12. AFIMS serves as overall manager of Fulcrum and is responsible for managing the Trust's daily business and has general responsibility for the management of the investments of the Portfolios. Sub-advisers have been hired to handle the day-to-day investment management of the Portfolios. The sub-advisers' activities are subject to general oversight by the Trustees and AFIMS. GAMCO Investors, Inc. (''GAMCO''), One Corporate Center, Rye, NY 10580–1434 serves as the sub-adviser of both GITP and VP. Bee & Associates (''Bee''), a division of Denver Investment Advisors LLC, serves as the sub-adviser of IGP. Analytic Investors, Inc. (''Analytic'') serves as the sub-adviser of GP.

13. For these services, each Portfolio pays an overall management fee, computed and accrued daily and paid monthly, based on its average daily net assets. The overall fee varies based on the performance of that Portfolio (after expenses) compared to that of an appropriate benchmark. The sub-adviser receives 80% of the fee, and AFIMS receives the remaining 20%. For the period beginning on the effective date of a Portfolio Manager Agreement with a new sub-adviser and ending with the last day of the twelfth full calendar month thereafter, each Portfolio pays a monthly advisory fee calculated at an annual rate of 0.80% of the Portfolio's average daily net assets. After the first 12 full calendar months with a new sub-adviser, as described above, each Portfolio pays a monthly advisory fee equal to a basic fee, plus or minus an incentive fee. The monthly basic fee equals one-twelfth of the annual basic fee rate of 2.0% multiplied by average daily net assets over the previous 12 months. The incentive fee ranges from − 2.0% to +2.0% on an annual basis, depending on a comparison of the Portfolio's performance (reflecting a deduction of portfolio expenses) and the performance of a selected benchmark index over the past 12 months.

14. In addition, AFIMS has agreed to limit operating expenses and reimburse those expenses to the extent that each Portfolio's ''other expenses'' (*i.e.,* expenses other than management fees) exceed the expense limitations set for the Portfolios. For the two years following the date that the expense limitations end and subject to certain conditions, each Portfolio will reimburse AFIMS for any Portfolio expenses it reimbursed pursuant to the expense limitations. AFIMS currently limits the ''other expenses'' for GITP and IGP to an annual rate of 1.50% of average daily net assets; the limitation on ''other expenses'' for GP and VP is an annual rate of 1.20% of average daily net assets.

15. Gabelli was organized on April 3, 1993 as a Maryland corporation. Its address is 7 Hanover Square, New York, NY, 10004. Gabelli currently consists of one series, Gabelli Capital Asset Fund (''GCAF'' or a ''Fund'') which is available to the public only through the purchase of certain variable annuity and variable life insurance contracts issued by The Guardian Insurance & Annuity Company, Inc. (''GIAC''). Subject to approval of this application, the Participation Agreement between GCAF and GIAC will be amended to permit the purchase of GCAF shares by the Applicant Separate Accounts. GCAF's primary goal is to seek growth of capital. The Fund's secondary goal is to produce current income. The Fund invests primarily in equity securities of companies that are selling in the public market at a significant discount to their ''private market value.'' Private market value is the value at which the Fund's sub-adviser believes informed investors would be willing to pay for a company.

16. Guardian Investor Services Corporation (''GISC''), located at 7 Hanover Square, New York, NY 10004, supervises the performance of administrative and professional services provided to the Fund by others, including the Fund's sub-adviser. GISC, which also pays the fees of the sub-adviser, serves as investment adviser to 14 funds with aggregate assets of over $7.8 billion as of March 31, 2001. As compensation for its services and related expenses borne by GISC, the Fund pays GISC a fee based on the value of the Fund's average daily net assets. Gabelli Funds, LLC, located at One Corporate Center, Rye, NY 10580–1434, manages the Fund's assets as the Fund's sub-adviser. The sub-adviser is a New York limited liability company organized in 1999 as successor to a company organized in 1980 and is a wholly-owned subsidiary of Gabelli Asset Management, Inc., a publicly held company. As compensation for its services and the related expenses borne by the sub-adviser, GISC pays the sub-adviser a fee based on a percentage of the value of the Fund's average daily nets assets. Neither GISC nor Gabelli Funds, LLC is affiliated with the Applicant Insurance Companies.

17. Applicant Insurance Companies have approved a proposal to make certain substitutions of shares held in sub-accounts of the Applicant Separate Accounts. Specifically, they have proposed to substitute (a) shares of SCAF for shares of GITP (b) shares of the SIEF for shares of IGP, (c) shares of SGIF for shares of GP, and (d) shares of GCAF for shares of VP. Applicants submit that the proposed substitutions are in the best interest of Contractholders.

18. SCAF and GITP have comparable investment objectives and seek to achieve these objectives by investing in equity securities and utilizing similar investment strategies. While recognizing that GITP has a more narrow focus than SCAF, Applicants have concluded that the investment objectives and policies of SCAF are sufficiently similar to those of GITP that the essential objectives and risk expectations of Contractholders can continue to be met. In addition, Applicants state that AIT does not include a fund focusing exclusively on telecommunication investments, and there is no fund advised by Gabelli Funds, LLC, with a telecommunications focus that can serve as an underlying fund for variable contracts. Applicants believe that, to the extent that there are differences between the investment objectives and policies of SCAF and GITP, the proposed substitution represents a transfer to a more conservative and a more diversified portfolio. Applicants believe that the proposed substitution will benefit Contractholders in that (a) SCAF has a larger asset base than GITP which should provide certain economies of scale and lower expenses, and (b) SCAF has better one-year and since inception performance records than GITP. Applicants believe that GITP has not grown to a size to allow it to operate efficiently. As shown in the table below, SCAF has a larger asset base than GITP, which should provide certain economies of scale, resulting in lower expenses, compared to GITP. The net assets of each Fund, as of March 31, 2001 are as follows:

	Net Assets
Select Capital Appreciation Fund	$433.3 Mllion.
Global Interactive/Telecomm Portfolio	$4.3 Million.

Applicants assert that, as a result of the proposed substitution, the Contractholders who currently invest in GITP will benefit from the lower expenses of SCAF. Applicants state that SCAF has a better performance record than GITP for the one-year and since inception periods. For example, for the one-year period ending December 31, 2000, SCAF out-performed GITP with an average annual total return 33.2% higher than that of GITP. Applicants have no reason to believe that, in the near-term, the performance of GITP will match or exceed that of SCAF. Applicants also believe that the substitution would provide for Contractholders a more predictable advisory fee. SCAF's investment advisory fee is an annual rate of 1.00% for the first $100 million of assets, 0.90% on the next $150 million, 0.80% on the next $250 million, 0.70% over $500 million and 0.65% over $1 billion. GITP's fee can vary from 0% to 4.00% depending on performance (for the year ended December 31, 2000, the advisory fee for GITP was 2.47% while the advisory fee for SCAF was 0.87%). For the foregoing reasons, Applicants submit that the proposed substitution of shares of SCAF for shares of GITP is in the best interest of Contractholders.

19. SIEF and IGP have similar investment objectives and seek to achieve these objectives by investing in similar types of equity securities and utilizing comparable investment strategies. While recognizing that SIEF focuses on the stocks of large cap companies and IGP focuses on small cap stocks, Applicants have concluded that the investment objectives and policies of SIEF are sufficiently similar to those of IGP that the essential objectives and risk expectations of Contractholders can continue to be met. Applicants believe that the proposed substitution will benefit Contractholders in that (a) SIEF has a larger asset base than IGP which should provide certain economies of scale and lower expenses, and (b) SIEF has a better long-term performance record. Applicants do not believe that IGP has grown to a size to allow it to operate efficiently. As shown in the table below, SIEF has a larger asset base than IGP, which should provide certain economies of scale, resulting in lower expenses, compared to SIEF. The net assets of each Fund, as of March 31, 2001 are as follows:

	Net Assets
Select International Equity Fund	$571.6 Million.
International Growth Portfolio	$1.6 Million.

Applicants assert that, as a result of the proposed substitution, the Contractholders who currently invest in IGP will benefit from the lower expenses of SIEF. Applicants state that SIEF has a better long-term performance record than IGP. For example, the return for SIEF for the five-year period ended December 31, 2000 was 12.26% compared to 3.26% for IGP for the period of March 2, 1996 through December 31, 2000. Applicants have no reason to believe that, in the near-term, the performance of IGP will match or exceed that of SEIF. Applicants also believe that the substitution would provide for Contractholders a more predictable advisory fee. SIEF's investment advisory fee is an annual rate of 1.00% for the first $100 million of assets, 0.90% on the next $150 million and 0.85% on assets over $250 million. IGP's fee can vary from 0% to 4.00% depending on performance (for the year ended December 31, 2000, the advisory fee for IGP was 3.71% while the advisory fee for SIEF was 0.88%). For the foregoing reasons, Applicants submit that the proposed substitution of shares of SIEF for shares of IGP is in the best interest of Contractholders.

20. SGIF and GP have similar investment objectives and seek to achieve these objectives by investing in similar types of equity securities and utilizing comparable investment strategies. Applicants have concluded that the investment objectives and policies of SGIF are sufficiently similar to those of GP that the essential objectives and risk expectations of Contractholders can continue to be met. Applicants believe that the proposed substitution will benefit Contractholders in that (a) SGIF has a larger asset base than GP, which may provide certain economies of scale and lower expenses, and (b) SGIF has a better long-term performance record. Applicants do not believe that GP has grown to a size to allow it to operate efficiently. As shown in the table below, SGIF has a larger asset base than GP, which should provide certain economies of scale, resulting in lower expenses, compared to GP. The net assets of each Fund, as of March 31, 2001 are as follows:

	Net Assets
Select Growth and Income Fund	$680.1 Million.
Growth Portfolio	$2.5 Million.

Applicants assert that, as a result of the proposed substitution, the Contractholders who currently invest in GP will benefit from the lower expenses of SGIF. Applicants state that SGIF has a better long-term performance record than GP. For example, the return for SGIF for the five-year period ended December 31, 2000 was 12.83% compared to 5.40% for GP for the period of December 1, 1996 through December 31, 2000. Applicants have no reason to believe that in the near-term the performance of GP will match or exceed that of SGIF. Applicants also believe that the substitution would provide for Contractholders a more predictable advisory fee. SGIF's investment advisory fee is an annual rate of 0.75% on the first $100 million of assets, 0.70% on the next $150 million and 0.65% on assets over $250 million. GP's fee can vary from 0% to 4.00% depending on performance (for the year ended December 31, 2000, the advisory fee for GP was 0.14% while the advisory fee for SGIF was 0.67%). For the foregoing reasons, Applicants submit that the proposed substitution of shares of SGIF for shares of GP is in the best interest of Contractholders.

21. GCAF and VP have similar investment objectives and seek to achieve these objectives by investing in similar types of equity securities and utilizing comparable investment strategies. Applicants have concluded that the investment objectives and policies of GCAF are sufficiently similar to those of VP that the essential objectives and risk expectations of Contractholders can continue to be met. Applicants believe that the proposed substitution will benefit Contractholders in that (a) GCAF has a larger asset base than VP which may provide certain economies of scale and lower expenses, (b) GCAF has a comparable performance record to that of VP, and (c) GCAF and VP are served by affiliated companies within the same investment advisory organization. Applicants do not believe that VP has grown to a size to allow it to operate efficiently. As shown in the table below, GCAF has a larger asset base than VP, which should provide certain economies of scale, resulting in lower expenses, compared to VP. The net assets of each Fund, as of March 31, 2001 are as follows:

	Net assets
Gabelli Capital Asset Fund	$156.8 Million.
Value Portfolio	$7.1 Million.

Applicants assert that, as a result of the proposed substitution, the Contractholders who currently invest in VP will benefit from the lower expenses of GCAF. Applicants state that GCAF and VP have comparable long-term performance records, which have resulted in favorable returns for investors. For example for the five-year period ended December 31, 2000, GCAF had a return of 17.46% compared to 18.23% for VP for the period of December 1, 1996 through December 31, 2000. Assuming the proposed substitution is approved, VP shareholders would continue to receive the potential benefits from having the same organization serve as sub-adviser. Applicants also believe that the substitution would provide for Contractholders a more predictable advisory fee. GCAF's investment advisory fee is an annual rate of 1.00%. VP's fee can vary from 0% to 4.00% depending upon performance (for the year ended December 31, 2000, the advisory fee for VP was 2.58% while the

advisory fee for SCAF was 1.00%). For the foregoing reasons, Applicants submit that the proposed substitution of shares of GCAF for shares of VP is in the best interest of Contractholders.

22. Applicants state that, as of the effective date of the substitutions, shares of GITP, IGP, GP and VP (the ''Replaced Portfolios'') held by the various Applicant Separate Accounts will be redeemed by the Applicant Insurance Companies. The proceeds of such redemptions, which may be effected in-kind, will then be used to purchase the appropriate number of shares of SCAF, SIEF, SGIF and GCAF (the ''Replacement Funds''). Since it is anticipated that the proposed substitution will be effected by in-kind transfer of assets, Contractholders will be fully invested at all times. The proposed substitutions will take place at net asset value with no change in the amount of any Contractholder's account value, cash value or death benefit or in the dollar value of his or her investment in either of the Applicant Separate Accounts. Contractholders will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or the Applicant Insurance Companies' obligations under the Variable Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, including brokerage fees, if any, will be paid by the Applicant Insurance Companies. In addition, the proposed substitutions will not impose any tax liability on Contractholders. The proposed substitutions will not cause the Variable Contract fees and charges currently being paid by existing Contractholders to be greater after the proposed substitutions than before the proposed substitutions. Applicant Insurance Companies agree that, for those Contractholders who are Contractholders on the Effective Date of the substitutions, Applicant Insurance Companies will not increase the asset-based or non-asset-based charges under the Variable Contracts for a period of 24 months following the Effective Date of the substitution, except to the extent of any increase in premium taxes charged by one or more states. The Applicant Insurance Companies further agree that if the total operating expenses for any Replacement Fund (net of any expense waiver or reimbursement) for any period (not to exceed a fiscal quarter) during the 24 months following the Effective Date of the substitution exceeds on an annualized basis the relevant Maximum Fund Expense Limit as stated below (which is the net expense ratio for each corresponding Replaced Portfolio for the fiscal year ended December 31, 2000), the Applicant Insurance Companies will make a corresponding reduction in the expenses for the relevant sub-account(s) of the Applicant Separate Accounts (either by reducing or waiving sub-account expenses for that corresponding period or by reimbursing the sub-account on the last day of the period). The Maximum Fund Expense Limits for the Replacement Funds are: 3.97% for the SCAF sub-account; 5.21% for the SIEF sub-account; 1.34% for the SGIF sub-account; and 3.78% for the GCAF sub-account. The proposed substitutions (and any transfer in advance of the substitution) will not be subject to a transfer charge and will not be counted toward any limit on transfers guaranteed not to be subject to a transfer charge.

23. By supplements to the various prospectuses for the Variable Contracts and Applicant Separate Accounts, all owners of the Variable Contracts have been notified of the Applicant Insurance Companies' intention to take the necessary actions, including seeking the order requested by the application to substitute shares of the Underlying Funds as described herein. The supplements for the Applicant Separate Accounts advised Contractholders that from the date of the supplement until a date at least 30 days after the proposed substitution, each owner may make one transfer, free of charge and without limitation, of all amounts allocated to the GITP, IGP, GP or VP sub-accounts, respectively, to another sub-account. That transfer will not be counted toward the limit on transfers guaranteed not to be subject to a transfer charge. Contractholders will also receive a current prospectus relating to SCAF, SIEF, SGIF and GCAF (unless the Contractholder has already received that prospectus).

24. In addition to the prospectus supplements distributed to owners of Variable Contracts, within five days after the proposed substitutions, any Contractholders who were affected by the substitutions will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer, free of charge for at least 30 days after the proposed substitution and without limitation, of all account value under a Variable Contract invested in any one of the affected sub-accounts on the date of the notice to another sub-account available under their Variable Contract. That transfer will not count as one of the number of transfers per year guaranteed to be free of charge. The notice will also state that the Applicant Insurance Companies will not exercise any rights reserved by either under any of the Variable Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states, Contractholders who are affected by the substitutions may exchange their Variable Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by the Applicant Insurance Companies (or one of their affiliates) during the 60 days following the proposed substitutions.

25. The Applicant Insurance Companies are also seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Section 26(c) was added to the 1940 Act by the Investment Company Amendments Act of 1970. Prior to the enactment of the 1970 amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted fund, recommended that section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval. Congress responded to the Commission's concerns by enacting section 26(b) (now (c)) to require that the Commission approve all substitutions by the depositor of investments held by the unit investment trusts.

2. The proposed substitutions appear to involve substitutions of securities within the meaning of section 26(c) of the Act. Applicants therefore request an order from the Commission pursuant to section 26(c) approving the proposed substitutions.

3. The Variable Contracts expressly reserve for the Applicant Insurance Companies the right, subject to compliance with applicable law, to substitute shares of another investment company for shares of an investment

company held by a Separate Account or a sub-account of a Separate Account. The prospectuses for the Variable Contracts and the Separate Accounts contain appropriate disclosure of this right. The Applicant Insurance Companies each reserved this right of substitution both to protect themselves and their Contractholders in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contractholders.

4. Under the proposed substitution of shares of SCAF for shares of GITP, shares of SIEF for shares of IGP, shares of SGIF for shares of GP and shares of GCAF for shares of VP, the interests of Contractholders will be better served primarily because each of the current funds would be replaced by a fund with a comparable investment objective, but with a significantly larger asset base, potentially resulting in lower expenses. In addition each of the proposed replacement funds has a superior or matching performance record compared to the respective current funds.

5. Applicants anticipate that Contractholders will be at least as well off with the proposed array of separate accounts and sub-accounts after the proposed substitutions as they have been with the array of separate accounts and sub-accounts offered prior to the substitutions. The proposed substitutions retain for Contractholders the investment flexibility, which is a central feature of the Variable Contracts.

6. None of the proposed substitutions is of the type that section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Variable Contracts provide each Contractholder with the right to exercise his or her own judgment and transfer account values into other sub-accounts. Moreover, the Variable Contracts will offer Contractholders the opportunity to transfer amounts out of the affected sub-accounts into any of the remaining sub-accounts without cost or other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption, which section 26(c) was designed to prevent.

7. The proposed substitutions also are unlike the types of substitutions which section 26(c) was designed to prevent in that by purchasing a Variable Contract, Contractholders select much more than a particular investment company in which to invest their account values. They also select the specific type of insurance coverage offered by either or both of the Applicant Insurance Companies under their Variable Contract as well as numerous other rights and privileges set forth in the Variable Contract. Contractholders may also have considered each or both Applicant Insurance Companies' size, financial condition, type and its reputation for service in selecting their Variable Contract. These factors will not change as a result of the proposed substitutions.

8. Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

9. Applicants also request an order under section 17(b) exempting them from the provisions of section 17(a) to the extent necessary to effect the proposed substitutions by means of in-kind redemptions and purchases of shares.

10. Section 17(a)(1) and (2) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, or any principal underwriter for such company (collectively, ''Transaction Affiliates''), acting as principal, from knowingly selling or purchasing any security or other property to that company. Applicants may be deemed to be Transaction Affiliates of one another based upon this definition.

11. Because the proposed substitutions may be effected by means of an in-kind redemption and a subsequent purchase of shares, also in an in-kind transaction, the substitutions may be deemed to involve one or more purchases or sales of securities or property between Transaction Affiliates. Because the Applicant Separate Accounts (as well as other separate accounts of the Applicant Insurance Companies) are registered collectively with the Commission as a single unit investment trust of which the Applicant Insurance Companies are the depositors, the Applicant Separate Accounts are affiliated persons of each other. Further, because each of the Applicant Separate Accounts are under the common control of the Applicant Insurance Companies, they are all affiliated persons of each other.

12. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of section 17(a) if the evidence establishes that: the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and the proposed transaction is consistent with the general purposes of the 1940 Act.

13. Applicants submit that, to the extent that the substitutions are deemed to involve principal transactions among Transaction Affiliates, the manner in which such substitutions are to be implemented are sufficient to assure that such transactions do not involve overreaching on the part of any Applicant or other person, and are fair and reasonable and consistent with the policies and purposes underlying the 1940 Act. Applicants further submit that neither the Underlying Funds nor either of the Applicant Separate Accounts will be participating in the substitutions or subsequent combination on a basis less advantageous than that of any other participant. Finally, Applicants state that, but for the fact that the substitutions may be effected by means of in-kind redemption and purchase transactions, rather than in cash, the procedures would comply with all of the conditions of rule 17a–7 under the 1940 Act. Accordingly, Applicants request an order of the Commission pursuant to section 17(b) of the 1940 Act to permit the substitutions and related transactions described in this Application. Applicants also submit that the proposed substitutions are consistent with the policies of each of the Applicant Separate Accounts and the Underlying Funds and with the general purposes of the 1940 Act.

The Applicants represent that, for all the reasons stated above, the terms of the proposed substitutions as set forth in the application, including any consideration to be paid and received, are reasonable and fair to: (a) The Applicant Insurance Companies; (b) AIT, Fulcrum and Gabelli and their funds/portfolios; and (c) the Contractholders invested in such funds/portfolios; and do not involve overreaching on the part of any person concerned. Furthermore, the Applicants represent that the proposed substitutions will be consistent with the policies of the Applicant Insurance Companies, AIT, Fulcrum and Gabelli as stated in the current registration statement and reports filed under the 1940 Act by each and with the general purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30648 Filed 12–11–01; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45133; File No. SR–OPRA–2001–04]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan to Make Technical Corrections to Section V(c)

December 5, 2001.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 24, 2001, the Options Price Reporting Authority (''OPRA''),[2] submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The proposed amendment would make technical corrections to section V(c) of the OPRA Plan. OPRA has stated that the proposed OPRA Plan amendment involves solely technical or ministerial matters and is, therefore, effective upon filing, pursuant to Rule 11Aa3–2(c)(3)(iii) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed OPRA Plan amendment from interested persons.

I. Description and Purpose of the Amendment

The proposed OPRA plan amendment would make technical corrections to Section V(c) of the OPRA Plan, as that section was recently amended.[4] These proposed corrections consist of the deletion of an inappropriate reference in paragraph (ii) of section V(c) and the redesignation of subparagraphs (i)–(iv) of paragraph (iv) of section V(c) as subparagraphs (A)–(D) in order to conform their designation to the style of the OPRA Plan. OPRA represents that the proposed OPRA Plan amendment would make no substantive change to the provisions of the OPRA Plan.

II. Implementation of the Plan Amendment

OPRA represents that the proposed OPRA Plan amendment involves solely technical or ministerial matters and is, therefore, effective upon filing, pursuant to Rule 11Aa3–2(c)(3)(iii) under the Act.[5] At any time within 60 days of the filing of the OPRA Plan amendment, the Commission may summarily abrogate the amendment and require that such amendment be filed in accordance with Rule 11Aa3–2(b)(1) under the Act[6] and reviewed in accordance with Rule 11Aa3–2(c)(2) under the Act[7] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–2001–04 and should be submitted by January 2, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30651 Filed 12–11–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to section 11A of the Exchange Act, 15 U.S.C. 78k–1, and Rule 11Aa3–2 thereunder, 17 CFR 240.11Aa3–2. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[3] 17 CFR 240.11Aa3–2(c)(3)(iii).

[4] *See* Securities Exchange Act Release No. 44580 (July 20, 2001), 66 FR 39218 (July 27, 2001) (order approving File No. SR–OPRA–2001–02).

[5] 17 CFR 240.11Aa3–2(c)(3)(iii).

[6] 17 CFR 240.11Aa3–2(b)(1).

[7] 17 CFR 240.11Aa3–2(c)(2).

[8] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45130; File No. SR–Amex–2001–17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Increasing Regular Memberships and Creating Two-Year Permits

December 5, 2001.

I. Introduction

On March 19, 2001, the American Stock Exchange LLC (''Exchange'' or ''Amex'') submitted to 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 increasing the number of regular memberships on the Exchange and creating two-year permits. The Exchange submitted Amendment Nos. 1, 2, and 3 to the proposed rule change on May 3, 2001,[3] May 16, 2001,[4] and May 18, 2001,[5] respectively. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Ivonne Natal, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission dated April 30, 2001 (''Amendment No. 1''). Amendment No. 1 states that on April 30, 2001, a majority of the regular and options principal members, voting as a single class, voted in favor of the proposed rule change.

[4] Letter from Ivonne Natal, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 14, 2001 (''Amendment No. 2''). Amendment No. 2 requests the Commission to consider the Plan on a pilot basis for a minimum of two years and a maximum of four years, in the event the Seat Fund Committee exercises its discretion to extend the Plan. Amendment No. 2 also states that there are approximately 300 members trading equities on the Exchange floor.

[5] Letter from Ivonne Natal, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 17, 2001 (''Amendment No. 3''). Amendment No. 3 clarifies that the administrative fee that the Amex would receive for administering the Plan would be $750.00 per sale/lease and that the administrative fee will be collected out of the sale proceeds, prior to their distribution to the members. Amendment No. 3 also states that Amex members and the Board of Governors have approved this fee.

proposed rule change was published for comment in the **Federal Register** on June 1, 2001.[6] The Commission received no comments on the proposal. This order approves the proposal. The portion of the proposed rule change establishing the trading permits is approved on a pilot basis for a minimum of two years and a maximum of four years, in the event that the Exchange's Seat Fund Committee exercises its authority to renew the permits for an additional two years.

II. Description of the Proposal

The Amex proposes to increase by 25 the number of regular memberships and create 25 two-year permits as a result of a Regular Seat and Two-Year Permit Offering Plan (the ''Plan''). The seats and the permits would be allocated as determined by the Exchange's Seat Fund Committee (''Committee''). The Committee would determine the sale price for regular seats would be at least $600,000. The price for two-year permits would be at least $14,000, per month.

The Committee would be able to renew the two-year permits once for an additional two years, but the permits would be non-transferable. A two-year permit would terminate if the holder went out of business. Any regular seats offered but not sold would be permitted to be converted into two-year permits as determined by the Committee.[7] The two-year permits would have no distribution or voting rights.

All prospective seat and/or permit holders would be required to be approved by the Exchange prior to the sale of a seat or the transfer of a permit by the Exchange. The Exchange would receive a $750 administrative fee for each sea/permit for administering the sale/transfer for prospective seat/permit owners.

Prior to any seat sale or permit transfer by the Exchange, a non-member or a person/organization that was not currently the owner of a regular membership would be required to meet all requirements currently applicable to regular or two-year permit holders. If the purchaser of a seat intended to lease the seat pursuant to a special transfer agreement or transfer the seat to a nominee, the lessee or nominee would also be required to meet all Exchange requirements. All applicable fees due by persons/organizations that are not owners of regular memberships or members of the Exchange would be required to be paid before the sale of any seat or transfer of any permit.

Sale proceeds will be distributed to all seat owners at a date to be determined by the Committee. The Ex-date for determining distribution of sale proceeds to owners would be the date of approval of the Plan by the Commission.

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[8] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] in that it is designed to remove impediments to and perfect the mechanism of a free and open market.[10]

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market by enhancing the depth and liquidity of the Amex floor by bringing additional capital and market participants to the Amex, which should attract more order flow. In addition, the Commission believes that the proposed rule change will enable the Exchange to better handle increased volume on the Exchange. The Commission believes that increasing the number of seats and providing a limited number of trading permits should enable Exchange members to afford customers an optimal level of service. The Commission notes that there are currently 864 Amex seat holders that have the ability to trade securities pursuant to the Exchange's equity trading rules and approximately 300 equity seat holders.[11] These traders are fully represented on the Exchange's Board and key committees. The Commission specifically notes that the proposed trading permits are limited in duration to a maximum of four years and constitute a *de minimis* number in relation to regular members that trade equities.[12] The Commission also notes that a majority of the Exchange's regular and options principal members voted in favor of the proposed rule change.

IV. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Amex–2001–17) is approved. The portion of the proposed rule change establishing trading permits is approved on a pilot basis for a minimum of two years and a maximum of four years.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 01–30652 Filed 12–11–01; 8:45 am]

BILLING CODE 8010–01–M

[6] Securities Exchange Act Release No. 44341 (May 23, 2001), 66 FR 29848.

[7] Consequently, if the Exchange did not sell any of the authorized seats, a maximum of 25 additional trading permits could be authorized, for a total of 50.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] Options seat holders are permitted to trade exchange traded funds, which trade pursuant to the Exchange's equity rules.

[12] The Act requires an Exchange to ''assure a fair representation of its members in the selection of its directors and administration of its affairs. . . .'' *See* section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3). This requirement serves to ensure that an exchange is administered in a way that is equitable to all those who trade on the exchange. If the trading permits had an unlimited term or more than a *de minimis* number of trading permits were being issued, the permit holders would be entitled to fair representation.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45128; File No. SR–ISE–2001–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the International Securities Exchange LLC and Amendment No. 1 Thereto Relating to Payment for Order Flow Fees

December 4. 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2001, the International Security Exchange LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which the ISE has prepared. On November 28, 2001, the ISE submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to establish a ceiling of $750,000 in each of the ten payment-for-order-flow funds that the ISE maintains. The text of the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

rule change is available at the ISE 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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under ISE Rule 802(b), the ISE has divided the options it trades into 10 groups, with one Primary Market Maker (''PMM'') assigned to each group. The ISE maintains a payment-for-order-flow fund for each group, consisting of the fees collected from market makers trading options in that group. The PMM for the group is responsible for arranging and making all payments to Electronic Access Members for order flow sent to the ISE in options in that Group.

The purpose of the proposed rule change is to establish a ceiling of $750,000 in each of the ten payment-for-order-flow funds that the ISE maintains. To date, the ISE has been paying out of these funds less money than has been collected, thus building a balance in the individual funds. The ISE believes that capping each fund at $750,000 will provide sufficient money for PMMs to maintain the payment-for-order-flow program while lessening the economic burden on market makers to continue to pay payment-for-order-flow fees. The funds for most of the ten groups of options either currently are at, or the ISE anticipates soon will reach, the $750,000 level. Once a fund reaches this level, market makers trading options in that group will pay the payment-for-order-flow fee only when the imposition of such fee is necessary to replenish the fund to the $750,000 level.

The ISE will implement the rule change so that market makers economically will not pay the payment-for-order-flow fee whenever the fund for a particular group reaches $750,000. In this regard, the ISE anticipates that soon all the group funds will reach this level. From that time forward, market makers will pay this fee only to the extent necessary to replenish a fund after the ISE makes its monthly payments to order flow providers. To the extent that collections exceed payments in a given month, market makers in a group will be responsible for the payment-for-order-flow fee only for that portion of the month necessary to return the fund to the $750,000 level.

The ISE will implement this process by working both with individual market makers and their clearing firms, who handle the payment of fees for their market maker clients. This could result in more than one operational process to implement this fee cap. For example, the ISE could cease charging the fee on the day that a fund reaches $750,000; alternatively, the ISE could continue to impose the fee for the entire month and then credit members for excess payments in their monthly bill. The ISE may adopt one or more of these processes (or a similar process) depending on the particular needs and practices of its market makers and clearing firms.

2. Basis

The ISE states that the basis for the proposed rule change is the requirement under Section 6(b)(4) of the Act [3] that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

[3] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(2) thereunder. [5] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to SR–ISE–2001–31 and should be submitted by January 2, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30656 Filed 12–11–01; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45135; File No. SR–NASD–2001–34]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the Restated Certificate of Incorporation of The Nasdaq Stock Market, Inc.

December 5, 2001.

I. Introduction

On May 8, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and rule 19b–4 thereunder,[2] a proposed rule change to amend its Restated Certificate of Incorporation (''Certificate'') to afford the holders of 4.0% Convertible Subordinated Notes due 2006 (the ''Notes'') the right to vote with Nasdaq stockholders.

On June 4, 2001 the NASD filed Amendment No. 1 to the proposal.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 22, 2001.[4] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The proposed rule change amends the Certificate to afford the holders of 4.0% Convertible Subordinated Notes due 2006 (the ''Notes'') the right to vote with Nasdaq stockholders. Nasdaq has sold $240 million of the Notes to Hellman & Friedman Capital Partners IV, L.P. H&F International Partners IV–A, L.P., H&F International Partners IV–B, L.P., and H&F Executive Fund IV, L.P. (collectively, the ''HFCP IV LPs''). Below is a description of the amendments proposed to the Certificate to ensure that holders of the Notes have the right to vote with Nasdaq shareholder.

Article Fourth

Paragraph C.1. Nasdaq proposes to amend this paragraph of the Certificate to provide that holders of the Notes have the right to vote with Nasdaq stockholders, with each holder of Notes entitled to a number of votes equal to the number of shares of common stock such holder would obtain upon conversion of the principal amount of Notes held by such person. The amendment also provides that holders of Notes shall be deemed to be stockholders and the Notes shall be deemed to be shares of stock solely for the purposes of provisions of the Delaware General Corporation Law and the Certificate that require the vote of stockholders as a prerequisite to corporate action.

Paragraph C.2. Nasdaq proposes to amend the provision of the Certificate that imposes restrictions on stockholders voting shares in excess of 5% of outstanding stock to make the same restriction applicable to holders of the Notes. Therefore, any person who beneficially owns shares of common stock and/or Notes convertible into common stock in excess of 5% of the then-outstanding shares of common stock would not be permitted to vote such excess shares and/or Notes.[5] As is true under the current Certificate, the calculation of the number of shares of common stock outstanding at any particular time is to be made in accordance with the last sentence of SEC Rule 13d–3(d)(1)(i).[6] As a result, shares of common stock that may be acquired by a holder of Notes through conversion would be deemed to be outstanding for purposes of calculating the voting power owned by such holder.

Paragraph C.3.(f), C.4., and C.5. Currently, these paragraphs: (1) Authorize the Nasdaq Board of Directors to make determinations necessary to implement Paragraph C of Article Fourth of the Certificate, including determinations about stockholder's beneficial ownership of shares; (2) empower the Nasdaq Board of Directors to demand that any person who is reasonably believed to be the beneficial owner of shares in excess of the 5% voting limitation provide information about such person's ownership interest; and (3) provide that determinations made by the Nasdaq Board of Directors to implement Paragraph C of Article Fourth of the Certificate are conclusive and binding upon Nasdaq and its stockholders. Nasdaq proposes to amend these paragraphs to include conforming references to the Notes.

Paragraph C.6. Currently, this paragraph provides that the 5% voting limitation does not apply to: (1) The NASD or its affiliates until such time as the NASD beneficially owns 5% or less of Nasdaq's outstanding common stock; or (2) any other person that the Nasdaq Board of Director may exempt prior to the time that such person beneficially owns more than 5% of the outstanding shares of common stock. The paragraph also provides that the Board may not approve an exemption fro the 5% limit for a registered broker or dealer or an affiliate thereof [7] or a person that is subject to a statutory disqualification under Section 3(a)(29) of the Act.[8] In addition, before granting an exemption, the Nasdaq Board must make certain findings with respect to the effect of an exemption on enumerated aspects of Nasdaq's regulatory obligations.

The proposed rule amendment would add conforming references to the Notes and would also provide that the HFCP IV LPs will be exempted from the 5% voting limitation if the Nasdaq Board of Directors approves an exemption from the 5% voting limitation for any other person (other than an exemption granted in connection with the establishment of a strategic alliance with another exchange or similar market). This exemption would not apply to any other person to whom the HFCP IV LPs might transfer Notes and/or common stock.

Paragraph C.7. Nasdaq represents that this paragraph is a savings clause that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated June 12, 2001 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 44423 (June 13, 2001), 66 FR 33593.

[5] The Commission notes that because paragraph C.1(b) of the Certificate deems the holders of Notes to be shareholders, this provision restricts voting of Notes to the extent that they are convertible into shares that exceed 5% of Nasdaq's then-outstanding Common Stock, or that exceed 5% when aggregated with the noteholder's direct holdings of Common Stock. Shares underlying the Notes held by a noteholder shall be deemed to be outstanding for the purpose of computing the percentage owned by that noteholder. The voting restriction applies only to holdings of shares and/or Notes in excess of the 5% threshold, however.

[6] 17 CFR 240.13d–3(d)(1)(i).

[7] A small number of the limited partners of the HFCP IV LPs are registered broker/dealers or affiliates of registered broker/dealers (the ''Broker/Dealer Investors''). The Certificate provides that Nasdaq may not exempt a registered broker/dealer or an affiliate thereof from the 5% voting limitation. The Certificate defines ''affiliate'' with reference to SEC Rule 12b–2, 17 CFR 240.12b–2, which in turn defines an ''affiliate'' of a specified person as ''a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.'' The interests of the Broker/Dealer Investors in the HFCP IV LPs are minimal. Moreover, the limited partnership agreements that govern the HFCP IV LPs provide that the limited partners shall take no part in the control or management of the business or affairs of the limited partnership, nor shall they have any authority to act for or on behalf of the limited partnership. Accordingly, the HFCP IV LPs are not affiliates of the Broker/Dealer Investors.

[8] 15 U.S.C. 78c(a)(39).

provides that if any portion of Paragraph C. of Article Fourth of the Certificate is found to be invalid, the validity of remaining provisions shall not be affected. Nasdaq proposes to amend the paragraph to include conforming references to the Notes.

Article Ninth

Nasdaq proposes to amend this article to provide that a two-third vote of the holders of outstanding Notes is required: (1) To amend Paragraph C. of Article Fourth of the Certificate in a manner that would adversely affect the rights of the holders of the Notes without similarly affecting the rights of stockholders; or (2) to amend such two-thirds voting requirements.

Article Eleventh

This article authorizes the Nasdaq Board of Directors to consider the effect of proposed corporate action on enumerated aspects of Nasdaq's regulatory obligations. Nasdaq proposes to amend the provision to include conforming references to the Notes.

III. Discussion

After careful review, 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 association.[9] In particular, the commission believes the proposal is consistent with the requirements of Sections 15A(b)(2) and (6) of the Act,[10] which require, among other things, that the Association be so organized and have the capacity to be able to carry out the purposes of the Act and to comply with, and enforce compliance with, the provisions of the Act, and that the Association's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The purpose of this filing is ensure that the holders of the Notes are granted the same voting rights, and are subject to the same limitations, as the holders of common stock. Therefore, in reviewing this filing, it is instructive to consider the commission's original findings in approving the Certificate.[11] In its order approving the Certificate, the Commission found that the 5% voting limitation and other limitations affecting the control of Nasdaq fulfill the obligations arising under sections 15A(b)(2) and (6). Specifically, the Commission noted that the limitation on voting shares owned in excess of 5% satisfies the requirements of Section 15A(b)(6) because it helps to avoid a situation where the integrity of Nasdaq might be compromised if the NASD had to choose between taking action against a broker or dealer that owned, and could vote, Nasdaq shares in excess of 5%, and fulfilling its self-regulatory responsibilities.

The Commission believes that the changes proposed to Nasdaq's Certificate in this filing are consistent with maintaining the 5% voting limitation that is currently contained in the Certificate, which serves the public interest by ensuring that certain individuals and entities cannot gain undue influence over the operations of Nasdaq, and are therefore consistent with sections 15A(b)(2) and (6).

The Commission also finds that the provision that would exempt HFCP IV LPs from the 5% voting limitation if the Nasdaq Board of Directors approves an exemption from the 5% voting limitation for any other person (other than an exemption granted in connection with the establishment of a strategic alliance with another exchange or similar market) is consistent with section 15A(b)(6) of the Act. The commission notes that as originally approved, the Certificate provided that the Board could grant exemptions from the voting limitation if certain conditions were met.[12] The proposed amendments do not alleviate or in any way change those conditions. They simply provide that if the Board finds it appropriate to approve an exemption for one person or entity, it must also grant the exemption to HFCP IV LPs assuming they meet the same conditions (unless the exemption discussed above for establishment of a strategic alliance applies).

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[13] that the proposed rule change (SR–NASD–2001–34) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30650 Filed 12–11–01; 8:45 am]

BILLING CODE 8010–01–M

[9] In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78o-3(b)(2) and (6).

[11] *See* Securities Exchange Act Release No. 42983 (June 26, 2000), 65 FR 41116 (July 3, 2000) (File No. SR–NASD–00–27).

[12] Specifically, the Certificate provides that in no event shall an exemption from the scaled voting provision be granted to (1) a registered broker or dealer, or an affiliate thereof, or (2) an individual or entity subject to statutory disqualification under section 3(a)(39) of the Act. The Board may approve an exemption from the scaled voting provision if the Board determines that granting the exemption would (1) Not reasonably be expected to diminish the quality of, or public confidence in, the Nasdaq Stock Market or other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45136; File No. SR–NYSE–2001–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Amending Paragraph (1) of the Guidelines to Exchange Rule 105 To Permit Approved Persons of Specialists to Act as a Specialist With Respect to an Option on a Specialty Stock

December 6, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 and (''Act''),[1] Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2001, the New York Stock Exchange, Inc. (''NYSE'' 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. The Exchange filed Amendment No. 1 to the proposed rule change on December 4, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 3, 2001 (''Amendment No. 1''). In Amendment No. 1, the NYSE decided to keep the portion of paragraph (l)(ii) of the Guidelines to NYSE Rule 105, which prohibits an approved person affiliated with an NYSE specialist that acts as an options market maker and any other approved person of the specialist from acting as a market maker in any equity security in which the associated specialist is registered as such and which underlies an option to which the approved person acts as an options market maker.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend paragraph (1) of the Guidelines to NYSE Rule 105 to permit an approved person of a specialist to act as a specialist or primary market maker with respect to an option on a stock in which the specialist acts as a market maker on the Exchange (''specialty stock''), provided that all of the requirements of the NYSE Rule 98 exemptive program are met.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 105

(a) through (k)—No change

* * * * *

(l) Specialist Shall Not Be Options Market-Maker

* * * * *

(ii) Notwithstanding the above, an approved person of an equity specialist entitled to an exemption from this rule under Rule 98 may act as a competitive market-maker, competitive options trader, registered options trader, or *as a specialist or market-maker* [in a similar non-primary market-making capacity] in any option as to which the underlying security is a stock in which the associated specialist is registered as such; provided, however, that if an approved person is so acting as an options market maker pursuant to this paragraph, neither that approved person, nor any other approved person of the specialist, may act as a market maker in any equity security in which the associated specialist is registered as such and which underlies an option as to which the approved person acts as an options market maker.

* * * * *

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 next 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, Proposed Rule Change

(1) Purpose

NYSE Rule 105 provides that an ''approved person'' (*i.e.,* an affiliate in a control relationship) of a specialist organization may trade options on a specialty stock only for hedging purposes. If the approved person establishes a system of internal controls and information barriers pursuant to Exchange Rule 98, however, the approved person may engage in proprietary trading of specialty stock options without being restricted solely to hedging transactions.

Currently, even with an NYSE Rule 98 exemption, an approved person of a specialist may not act as a specialist or primary market maker with respect to an option on a specialty stock. Such approved person of a specialist may, however, act as a competitive or non-primary market maker in a specialty stock option. According to the Exchange, the prohibition on acting as an options specialist or primary market maker has been rooted, historically, in concerns about the perception of an inherent conflict of interest, as there is a direct pricing relationship between a stock and its associated option.

The Exchange believes that on-going consolidation within the securities industry makes it likely that large, well-capitalized, well-regulated organizations may seek to conduct distinct business operations among several affiliated entities. The concerns about possible conflicts of interest as between stock and option market making continue to exist, but the Exchange believes that they can be effectively addressed pursuant to the NYSE Rule 98 exemptive program. The Exchange believes that its experience with this program has demonstrated the viability of ''functional regulation'' whereby affiliated entities conduct distinct lines of business with strict information barriers between them. Under the NYSE Rule 98 program, specialists and their affiliates must present their proposed operating model to the Exchange for prior approval, and are thereafter, subject to annual NYSE examination. The Exchange states that the NYSE Rule 98 program has been in effect for more than 15 years, and forwards that there have been no instances of a material breach of information barriers.

The Exchange now proposes to amend paragraph (1) of the Guidelines to NYSE Rule 105 to permit an approved person of a specialist to act as a specialist or primary market maker with respect to an option on a specialty stock, provided all requirements of the NYSE Rule 98 exemptive program are met. Thus, among other matters, the approved person must (i) conduct its operations in a legal entity that is separate and distinct from the Exchange equity specialist; (ii) maintain separate and distinct books and records and its own, separately dedicated capital; (iii) maintain strict information barriers between itself and the affiliated Exchange equity specialist regarding trading and position information; (iv) conduct its day to day business with its own staff; and (v) make all trading decisions independent of the Exchange equity specialist.

The Exchange believes that these safeguards are sufficient to address potential conflict of interest problems, while ensuring that the separate entities remain subject to meaningful functional regulation.

(2) Statutory Basis

The Exchange believes the basis for the proposed rule change, as amended, is the requirement under section 6(b)(5) of the Act[4] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Time for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the Exchange consents, the Commission will:

[4] 15 U.S.C. 78f(b)(5).

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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2001–43 and should be submitted by January 2, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30653 Filed 12–11–01; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45132; File No. SR–Phlx–2001–107]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Extension of the Interim Intermarket Linkage Program

December 5, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act of 1934''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240–19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 under the Act, proposes to extend the pilot program authorizing implementation of ''interim linkages'' with the other options exchanges.[3]

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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section 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 purpose of the proposed rule change is to request an extension of an intermarket options linkage on an ''interim'' basis. Currently, the Exchange is operating this interim linkage as a pilot program pursuant to Phlx Rule 1081. The interim linkage utilizes existing market infrastructure to facilitate the sending and receiving of order flow between Phlx Specialists, and may later include Registered Options Traders, and their counterparts on the other options exchanges as an interim step towards development of a ''permanent'' linkage. The Exchange now proposes that the interim linkage would remain in effect on a pilot basis until April 1, 2002.

By way of background, the Commission has approved a linkage plan that now includes all five options exchanges.[4] The options exchanges continue to work towards implementation of this linkage, including contracting with a third party to build a linkage infrastructure. In the meantime, the options exchanges have implemented this interim linkage.

The key component of the interim linkage is the participating exchanges opening their automated customer execution systems, on a limited basis, to market maker orders. Specifically, market makers, such as Phlx Specialists, and later Registered Options Traders, are able to designate certain orders as ''customer'' orders, and thus, receive execution under the automatic execution parameters of participating exchanges pursuant to the interim linkage.[5]

The interim linkage authorizes the Phlx to implement bilateral or multilateral interim arrangements with the other exchanges to provide for equal access between market makers on our respective exchanges. Currently the interim linkage pilot program allows Phlx Specialists and their equivalents on the other exchanges, when they are holding customer orders, to send orders reflecting the customer orders to the other market for execution when the other market has a better quote. Such orders are limited in size to the lesser of the size of the two markets' ''firm'' quotes for customer orders. The Exchange expects that the interim linkage may expand to include limited access for pure principal orders of no more than 10 contracts.

Under the rules of the pilot program, all interim linkage orders must be ''immediate or cancel'' (that is, they cannot be placed on an exchange's limit order book), and a market maker can send a linkage order only when the other (receiving) market is displaying the best national bid or offer and the sending market is displaying an inferior price. This allows a Phlx Specialist to access the better price for its customer. In addition, if the interim linkage includes principal orders, it would allow market makers to attempt to ''clear'' another market displaying a superior quote.[6]

Phlx Specialists' participation in the interim linkage is voluntary. Only when a Phlx Specialist and their equivalent on another exchange believe that this form

[3] On May 16, 2001, the Commission issued a notice of filing and immediate effectiveness of a pilot program submitted by the Phlx authorizing the implementation of an interim linkage. *See* Securities Exchange Act Release No. 44311, 66 FR 28768 (May 24, 2001).

[4] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000).

[5] As with other orders that are executed under the automatic execution parameters of the Exchange, when a limit order constitutes the Exchange's best bid or offer, the specialist executes the incoming order against that order.

[6] The Commission continues to expect that any exchange participating in the interim linkage will implement heightened surveillance procedures to help ensure that their respective market makers send only properly-qualified orders through the interim linkage.

of mutual access is advantageous will the exchanges employ the interim linkage procedures. The Exchange believes that the interim linkage benefits investors and provides useful experience to help the exchanges in implementing the full linkage. For these reasons, the Exchange requests an extension of the pilot program until April 1, 2002.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6(b)(5) under the Act [7] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or 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 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 Phlx. All submissions should refer to File No. SR–Phlx–2001–107 and should be submitted by January 2, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30654 Filed 12–11–01; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45129; File No. SR–Phlx–99–41]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 thereto by the Philadelphia Stock Exchange, Inc. Relating to the Trading of Trust Shares

DATES: December 4, 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 November 9, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposal relating to the trading of Trust Shares. On July 10, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] On October 1, 2001, the Exchange filed Amendment No. 2 to the proposal.[4] On November 28, 2001, the Exchange filed Amendment No. 3 to the proposal.[5] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant partial accelerated approval to the proposal.[6]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt additional rules and rule amendments that, if approved, would accommodate the trading of Trust Shares. Specifically, the Exchange is proposing to amend Rule 126 to provide for the crossing of block orders; Rule 119 to provide for enhanced specialist participation in Trust Shares; Rule 229 to provide for at-the-opening orders and to provide display of bids and offers in Trust Shares; Rule 703 to establish a minimum net capital requirement for specialists in Trust Shares; and Rule 203 to give precedence to at-the-opening orders and other market orders at opening.[7] Amendment No. 2 replaces the original filing and Amendment No. 1 in their entirety. A list of proposed provisions that the Exchange proposes to establish or amend, is set forth below, with the name of the pertinent rule noted. This is followed by proposed rule text. Proposed new language is in italics; proposed deletions are in brackets.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Nandita Yagnik, Attorney, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 7, 2000 (''Amendment No. 1''). Amendment No. 1 replaced the original proposal in its entirety. The original proposal contained provisions related to the listing of Trust Shares. These provisions do not appear in Amendment No. 1, but were filed in a separate rule proposal, File No. SR–Phlx–00–54. *See* Securities Exchange Act Release No. 43717 (December 13, 2000), 65 FR 80976 (December 22, 2000).

[4] *See* letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated September 28, 2001 (''Amendment No. 2''). Amendment No. 2 replaced Amendment No. 1 in its entirety. Amendment No. 2, among other things, omits provisions in the original proposal relating to the establishment of Registered Equity Market Makers to trade Trust Shares.

[5] *See* letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated November 28, 2001 (''Amendment No. 3''). Amendment No. 3 made certain technical changes to the amended rule proposal.

[6] The Exchange requested accelerated approval of all portions of the proposal except those that deal with guaranteed specialist participation.

[7] Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Steven Johnston, Special Counsel, Division, Commission on October 2, 2001 (clarifying that proposed changes to Rules 229 would apply to certain other securities as well as Trust Shares.)

Rule provision	Name of rule
Rule 119(g)	Enhanced Specialist Participation for Trust Shares.*
Rule 126(f) and (g).	Crossing Orders.*
Rule 203	Agreement of Specialists.
Rule 229	PACE.
Rule 703	Financial Responsibility and Reporting.*

*These provisions would apply only to Trust Shares.

Rule 119 Precedence of Highest Bid

Enhanced Specialist Participation for Trust Shares

(g) When the registered specialist in Trust Shares is on parity with a controlled account as defined below, in accordance with Exchange Rules 119 and 120, the specialist is entitled to receive 30% of the initiating order, except in the following circumstances:

(1) where there is one controlled account on parity, the specialist is entitled to receive 60% of the initiating order; or

(2) where there are two controlled accounts on parity, in which case the specialist is entitled to receive 40% of the initiating order.

Further, no customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist. For purposes of this provision, a controlled account includes any account controlled by or under common control with a member broker-dealer. Customer accounts are all other accounts.

Rule 126 ''Crossing Orders''

* * * * *

Supplementary Material:

* * * * *

(f) When a member has an order to buy and an order to sell an equivalent amount of the same Trust Share, and both orders are of 25,000 Trust Shares, and both orders are of 25,000 Trust Shares or more and are for the accounts of persons who are not members or member organizations, the member may ''cross'' those orders at a price at or within the prevailing quotation. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The member shall follow the crossing procedures of Rule 451(d), and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction, in whole or in part, at the cross price. A transaction effected the cross price in reliance on this Supplementary Material (f) shall be printed as ''Stopped Stock''

(g) Orders to cross 25,000 shares or more Trust Shares, where one or both sides of such cross is for the account of a member or member organization, will be permitted to establish precedence based on size so long as the orders are represented at the post when a sale removing all bids and offers from the Floor takes place. Once the precedence of such orders of 25,000 Trust Shares or more has been established, the broker handling the cross must then bid and offer the security in accordance with Rule 451.

Rule 203 Agreement of Specialists

* * * * *

(e)(i) At an opening, all market orders (whether entrusted to or left with the specialist or represented by a broker or brokers in the Trading Crowd) including at the opening market orders, shall have precedence over limit orders and shall be executed at one price.

(ii) In connection with an opening:

(A) A limited price order to buy which is at a higher price than the price at which the security is to be opened, and a limited price order to sell which is at a lower price than the price at which the security is to be opened, are to be treated as market orders.

(B) A market order to sell short is not to be treated as other market orders, but is to be treated as a limited price order to sell at the price of the first permissible short sale. A limited price order to sell short which is at a lower price than the price at which the security is to be opened, is to be treated as a limited price order to sell at the price of the first permissible short sale. Such orders are to be treated as market orders only if the opening price is higher than the first permissible short sale price.

Rule 229 Philadelphia Stock Exchange Automated Communication and Execution System

* * * * *

Commentary .01

Member organizations wishing to participate in PACE may send to the Philadelphia trading floor market, [and] limit, *and at-the-opening* orders up to the maximum number of shares in securities traded under PACE as shall be fixed by the Exchange from time to time. All orders in eligible securities shall be executed in whole or in part on a first in first out basis. *An at-the-opening order is a market, or limited price order which is to be executed on the opening trade or not at all, and any such order or the portion thereof not so executed is to be treated as cancelled.*

* * * * *

Commentary .15

Orders to which special conditions are attached may be accepted under PACE. The following are the types of orders which will be accepted under PACE:

All or none
Do not increase
Do not reduce
Limit
Market
Open (GTC, day, etc.)
Round-lot, odd-lot, partial round-lot
Stop
Stop limit
With or without
At-the-opening order

* * * * *

Commentary .20

A specialist is responsible for the visibility to the trading crowd of screen displaying the bids and offers for Trust Shares.

Rule 703 Financial Responsibility and Reporting

(a) Financial Responsibility Standards.—Each member organization and foreign currency option participant organization effecting securities transactions shall comply with the capital requirements set forth below:

* * * * *

(v) An assigned Specialist in Trust Shares, as defined in Rule 803(i), that are listed on the Exchange, shall be required to maintain a minimum of $1,000,000 in net capital. The assigned Specialist shall immediately inform the Examinations Department upon failure to be in compliance with such requirement. The Exchange may waive the financial requirements of this Rule in unusual circumstances.

(v*i*) a member organization or foreign currency option participant organization shall promptly notify the Exchange if it ceases to be in compliance with the net capital requirements of SEC Rule 15c3–1 and/or the provisions of paragraphs (a)(iii) and (a)(iv) above.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings with the Commission, the self-regulatory organization 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 self-regulatory organization 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

On November 8, 1999 the Exchange submitted to the Commission a proposal to adopt new rules and rule amendments to accommodate the trading of Trust Shares, securities that represent interests in a unit investment trust operating on an open end basis and holding a portfolio of securities.[8] The rule amendments deal with the manner in which Trust Shares are expected to trade.

PACE. The Exchange is proposing amendments to Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System (''PACE''). PACE is the Exchange's automatic order routing and execution system on the equity trading floor. PACE accepts orders for manual and automatic execution in accordance with the provisions of Rule 229, which governs PACE and defines its objectives and parameters. The Exchange proposes to amend sections .01 and .15 of the Supplementary Material accompanying Rule 229 to provide for an at-the-opening order for the trading of securities accepted over PACE. An at-the-opening order would be defined as a market or limited price order which is to be executed on the opening trade in a security or not at all, with any such order (or the portion thereof) not so executed to be cancelled.[9] This order type is particularly important for retail investors, institutions, and professional traders who may require execution at the opening price to fulfill their special timing or liquidity needs.

Single Price Opening. The Exchange is proposing to amend Rule 203 to codify single price opening for Trust Shares and other securities.[10] Proposed subsection (e) of Rule 203 would provide that at an opening, all market orders (whether entrusted to or left with the specialist or represented by a broker or brokers in the trading crowd) including at-the-opening market orders, would have precedence over limit orders and would be executed at one price. Market orders receive priority over limit orders in that situation because they must be executed instantaneously at the market price. Provided that there is sufficient liquidity, limit orders at the opening price may be executed with market orders. Limit orders that are not near the opening price will remain on the specialist's book until they come due.

Proposed subsection 203(e)(ii) would provide that a limited price order to buy which is at a higher price than the price at which the security is to be opened, and a limited price order to sell which is at a lower price than the price at which the security is to be opened, are to be treated as market orders. It also would provide that a market order to sell short would be treated as a limited price order to sell at the price of the first permissible short sale. A limited price order to sell short which is at a lower price than the price at which the security is to be opened would be treated as a limited price order to sell at the price of the first permissible short sale. Such orders would be treated as market orders only if the opening price were higher than the first permissible short sale price.

The specialist, who may base the price upon the index value as well as the last sale price and other market factors, would determine the opening price. This differs from the current method of opening for non-primary listed securities, which is based upon the primary market's opening price. Other exchanges have comparable rules.[11]

Block Orders. The Exchange is also proposing new Supplementary Material (f) to Phlx Rule 126, ''Crossing Orders.'' The proposed new Supplementary Material would apply only to the crossing of block orders in Trust Shares and not to the trading of any other securities on the Exchange's equity floor. The proposed rule amendment would permit a member to ''cross'' at a price at or within the prevailing quotation an order to buy and an order to sell an equivalent amount of the same Trust Share if both orders are for 25,000 Trust Shares or more and are for the accounts of persons who are not members or member organizations. The member's bid or offer would be entitled to priority at the cross price, regardless of pre-existing bids or offers at that price. Another member could trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member providing a better price to one side of the cross transaction would be required to trade with all other market interest having priority at that price before trading with any part of the cross transaction at the cross price.

In addition, new Supplementary Material (g) would permit a member to ''facilitate'' the crossing of orders at a price at or within the prevailing quotation, when the member has an order to buy or sell and one or both of the orders to be crossed are for persons who are members or member organizations and both orders are for 25,000 shares or more, so long as the orders are represented at the post when a sale removing all bids and offers from the Floor takes place. The Phlx understands that these cross transactions, like other exchange transactions, remain subject to section 11(a) of the Act and the rules thereunder. For example, a member relying on the exception provided by Rule 11a2–2T may need to utilize an ''independent'' floor broker to satisfy the requirements of that Rule. Other exchanges have similar provisions.[12] The Exchange represents that its proposed crossing provision is appropriate given the large size of Trust Share orders that the Exchange anticipates will be generated by investors.

Enhanced Participation for Trust Shares. Proposed new section (g) of Rule 119, which is based upon Phlx Options Rule 1014(g)(i) and (ii), *Equity Option and Index Option Priority and Parity*, provides for splits, which means trade participation among the crowd. The new subsection would provide Phlx equity specialists in Trust Shares with an enhanced participation in ''parity trades'' or trades where there are several participants bidding/offering the same

[8] Each Trust will provide investors with an instrument that (1) closely tracks the underlying portfolio of securities; (2) trades like a share of common stock; and (3) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).

[9] The proposed definition generally tracks the definition of ''at the opening order'' found in American Stock Exchange LLC (''Amex'') Rule 131(f) and New York Stock Exchange (''NYSE'') Rule 13.

[10] Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Steven Johnston, Special Counsel, Division, Commission on December 4, 2001 (clarifying the scope of securities eligible for single-price opening.)

[11] *See, e.g.*, Amex Rule 108(a) and (b).

[12] See NYSE Rule 72.1(b) (Priority of Agency Cross Transactions); Amex Rule 126, Commentary sections .01 and .02 (Precedence of Bids and Offers); and Chicago Stock Exchange Rule 23, Interpretations and Policies section .02 (Cross Transactions of 25,000 Shares or More).

price.[13] While a parity trade is generally divided evenly among the crowd participants on parity, enhanced participation would give the specialist a greater share of trades than he would normally receive. The purpose of the proposed enhanced parity split is to encourage specialists to make deep and liquid markets in order to attract order flow to the Exchange. Specialists have responsibilities that other crowd participants do not share, such as staffing costs associated with continually updating and disseminating quotes.[14] Therefore, the Exchange represents that granting certain advantages to specialists, such as the proposed enhanced parity split, is a reasonable measure for attracting and retaining well-capitalized specialists.

The Exchange also represents that application of the proposed enhanced parity splits would under no circumstances cause a customer on parity to receive a smaller participation than any other crowd participant, including the specialist. Under the proposal, a customer on parity is ensured a participation that, at a minimum, is equal to that given any other participant on parity.

Current Phlx Rule 199(g) defines a ''controlled account'' as any account controlled by or under common control with a member broker-dealer, and defines ''customer accounts,'' which include discretionary accounts, as all accounts other than controlled accounts and specialist accounts. Proposed Rule 119(g) provides that when the specialist in Trust Shares is on parity with one controlled account, the specialist is entitled to receive 60% of the initiating order and the controlled account would receive 40%. When the specialist is on parity with two controlled accounts, the specialist is entitled to receive 40% of the initiating order and each controlled account would receive 30%. When the specialist is on parity with three or more controlled accounts, the specialist is entitled 30% of the initiating order remaining after any customer accounts on parity have been filled. As noted above, in any of these situations if a customer were on parity, the customer would not be disadvantaged by receiving a lesser allotment than any other crowd participant, including the specialist.

Enhanced parity is intended to encourage specialist units to trade and to provide liquidity in Trust Shares, thereby attracting order flow to the Exchange. The Exchange believes the proposal balances the competing interests of specialists and market makers.

Financial Responsibility and Reporting. Currently, specialists are required to have $100,000 in net capital to trade equity securities. Trust Shares, which are to be listed on the Exchange, can be expected to entail a substantial financial commitment on the part of the specialist assigned to them. Because of the potential risk associated with listed Trust Shares, the Exchange is proposing to establish a minimum net capital requirement of $1,000,000 for the trading of listed Trust Shares by specialists. The Exchange believes that imposing a higher net capital requirement is one way to ensure that the Trust Share specialist can carry out his duties to maintain a fair and orderly market. The Exchange notes that in the past it has required higher net capital requirements for specialists in FLEX® options. Specialists in those options are also required to have $1,000,000 in net capital.[15] The proposed higher net capital requirement for specialists in Trust Shares traded at the Phlx on a primary basis (contained in proposed new Rule 703(a)(v)) would not apply to Trust Shares traded on an unlisted trading privileges basis.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[16] in general and furthers the objectives of section 6(b)(5)[17] in particular in that it is designed to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors.

B. Self-Regulatory Organization's Statement on Burden of Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act,[18] for approving, prior to the thirtieth day after publication in the **Federal Register**, portions of the rule proposal related to the following: proposed subsections (f) and (g) of Supplementary Material to Rule 126; proposed subsection (e) of Rule 203; proposed Commentary .20, and proposed amendments to Rule Commentary .01 and .15, to Rule 229; and proposed amendments to subsection (a) of Rule 703.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

[13] Under Phlx Rules 119 and 120, when bids and offers are made simultaneously, or when it is impossible to determine clearly the order of time in which they were made, all such bids and offers shall be on parity. For example, suppose a floor broker holding a sell order for 100 Trust Shares announces his order to the crowd. In response, three crowd participants might simultaneously bid to buy the 100 Trust Shares at the same price. The bids are on parity.

[14] The Exchange is also proposing in this rule filing a $1,000,000 minimum net capital requirement for the specialist in Trust Shares listed on the Exchange.

[15] *See* Phlx Rule 1079(c).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–99–41 and should be submitted by January 2, 2002.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Phlx has requested that the Commission approve the amended rule proposal on an accelerated basis, except for portions of the amended proposal concerning enhanced participation of specialists. The Exchange notes that the changes for which it seeks accelerated approval would result in rule provisions that are substantially similar to previously approved rules of other exchanges. Further, the Phlx represents that granting approval of the changes would be consistent with the protection of investors and the public interest.

The Commission finds that the portions of the rule change proposal for which the Exchange has requested accelerated approval are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the amendments are consistent with section 6(b)(5) of the Act,[19] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange has proposed to amend Rule 203 to codify a single price opening for Trust Shares and other securities for which the Exchange is the primary market. In a single-price opening, the specialist seeks to achieve a balance between buy orders and sell orders by setting and displaying a price where there is roughly equal interest on both sides of the market. The price at which this balance is achieved becomes the opening price. Market orders are used to ascertain this balance and, at opening, have precedence over limit orders. The Commission finds the proposal to establish a single price opening is consistent with previously approved rule provisions,[20] and should provide for efficient opening of trading in Exchange securities for which the Phlx is the primary market.

The Exchange proposal would also accommodate the crossing of block trades in Trust Shares. The specific crossing procedures that would be used differ, depending on whether a cross involves an order for the account of an exchange member (a proprietary cross) or no orders for the account of an exchange member (an agency cross). In the proprietary cross situation, orders to be crossed are only permitted to establish precedence based on size if they are represented at the post when a sale has taken place and removed all other bids and offers from the trading floor. In addition, before a member may cross an order with an order for the member's own account, the member would have to satisfy procedural requirements in Rule 451. To take securities in the cross, for example, the member would need to have offered the same securities in the open market at a price higher than the member's bid by the minimum trading increment permitted in those securities; to supply securities in the cross, the member would need to have bid for the securities on the open market at a price lower than the member's offer by the minimum trading increment permitted in those securities.

In the agency cross situation, a member's bid or offer would be entitled to priority over pre-existing bids or offers at the cross price. The member would be required to satisfy the procedure in Rule 451(d), which permits a member to ''report to his principal a transaction made with the member himself when he has orders from two principals to buy and to sell the same security,'' as long as the member adds to his name on that report the words ''on order.'' Another member would be permitted to trade with either side of a pending cross transaction (*i.e.,* ''break up'' the cross), but only if that other member: (1) offers an improved price to either side of the pending cross transaction; and (2) trades with all market interest that has priority over the price-improving member at the improved price. If these conditions are satisfied, the price-improving member may trade with all or part of either the bid or offer side of the pending cross at the improved price.

As the Phlx noted, the use of a proprietary cross to execute trades raises the issue of compliance with section 11(a) of the Act. For a proprietary cross to avoid violating section 11(a), it must be accomplished consistent with an exception to that section's general prohibition against exchange members trading for their own accounts. As noted by the Exchange in Amendment No. 2 to the proposal, rule 11a2–2(T), *Transactions Effected by Exchange Members Through Other Members,* is one such exception,[21] and an Exchange member seeking to rely upon that rule may need to utilize an independent floor broker. The Commission recognizes that the Exchange is aware of and has addressed the relationship between continued compliance with section 11(a) and the proposed proprietary crossing provision.

The Exchange also proposed to impose a new net capital requirement pertaining to Trust Shares and to make specialists responsible for displaying bids and offers in Trust Shares to the crowd. The Commission finds that the proposed net capital requirement is consistent with the Exchange's expectation that Trust Shares may entail a substantial financial commitment by specialists and that the display requirement is essential to ensuring price transparency.

The Commission finds good cause for partially approving the proposed rule change, and Amendment Nos. 1, 2, and 3 thereto, prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act.[22] The portions of the proposed and amended rule change pertaining to the crossing of block trades in Trust Shares, single price openings, and at-the-opening orders conform to rule provisions previously approved for use on the Amex. In addition, the proposal to impose special net capital requirements in connection with the trading of Trust Shares is consistent with a previously approved proposal of the Boston Stock Exchange, and the proposal to display bids and offers in Trust Shares is necessary to ensure transparent trading of this new securities product.

Amendment No. 1 to the proposed rule change, among other things, eliminated portions of the original proposal pertaining to the listing of Trust Shares. The Exchange subsequently filed, and the Commission approved, a separate rule proposal on that topic. Amendment No. 2, among other things, also eliminated from the proposal provisions pertaining to the establishment of Registered Equity Traders in Trust Shares. Amendment No. 2 also strengthens the original proposal by carefully delineating between procedures applicable to proprietary cross transactions versus those the Phlx would apply to agency cross transactions. Amendment No. 3 further strengthens the proposal by

[19] 15 U.S.C. 78s(b)(5).

[20] *See* Amex Rule 108(a) and (b).

[21] The rule was adopted by the Commission pursuant to its authority under Section 11(a)(1)(H) and (a)(2). *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978).

[22] 15 U.S.C. 78f(b)(2).

correcting certain technical errors in the rule proposal. Accordingly, the Commission finds good cause for granting partial accelerated approval to the rule proposal, as amended.[23]

VI. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[24] that proposed amendments to Phlx Rule 126, Rule 203, Rule 229, and Rule 703 are hereby approved.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30655 Filed 12–11–01; 8:45 am]

BILLING CODE 8010–01–M

[23] The proposed rule change to Rule 119(a), *Enhanced Specialist Participation,* is not being approved but is only being noticed for comment by the Commission for review under section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)).

[24] 15 U.S.C. 78s(b)(2).

[25] In approving the proposals, the Commission has considered their impact on efficiency, competition, and capital formation.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–11106]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0115, 2115–0078, 2115–0113, and 2115–0013

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of four Information Collection Requests (ICRs). The ICRs comprise (1) Electrical Engineering—Title 46 CFR Subchapter J, (2) Operations Manual and Amendments for Facilities Transferring Oil and Hazardous Materials in Bulk, (3) Self-propelled Vessels Carrying Liquefied Gas, and (4) Application and Permit to Handle Hazardous Material. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before February 11, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket (USCG 2001–11106) more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at 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 on the Internet at http://dms.dot.gov.

Copies of the complete ICR are available through this docket on the Internet at http://dms.dot.gov, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document (USCG 2001–11106), and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Electrical Engineering—Title 46 CFR subchapter J.

OMB Control Number: 2115–0115.

Summary: We need the information sought here to ensure compliance with our rules on electrical engineering for the design and construction of U.S.-flag commercial vessels.

Need: 46 U.S.C. 3306 and 3703 authorize the Coast Guard to establish rules to promote the safety of life and property in commercial vessels. These rules appear at 46 CFR subchapter J (parts 110 to 113).

Respondents: Owners, operators, and builders of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,153 hours a year.

2. *Title:* Operations Manual and Amendments for Facilities Transferring Oil and Hazardous Materials in Bulk.

OMB Control Number: 2115–0078.

Summary: An operations manual is mandatory for waterfront facilities that will be transferring bulk oil or hazardous materials to or from vessels. It establishes procedures for personnel of the facility to follow when conducting the transfer and in the event of a spill.

Need: 33 U.S.C. 1321 authorizes the Coast Guard to establish rules to prevent the discharge of oil and hazardous materials from facilities. 33 CFR part 154 prescribes these rules.

Respondents: Owners and operators of waterfront facilities.

Frequency: On occasion.

Burden Estimate: The estimated burden is 27,369 hours a year.

3. *Title:* Self-propelled Vessels Carrying Liquefied Gas.

OMB Control Number: 2115–0113.

Summary: We need the information sought here to ensure compliance with our rules for the design and operation of carriers of liquefied gas.

Need: 46 U.S.C. 3703 and 9101 authorize the Coast Guard to establish rules to protect life, property, and the environment from the hazards associated with the carriage of dangerous liquid cargo in bulk. 46 CFR part 154 prescribes these rules for the carriage of liquefied gases in bulk on self-propelled vessels by governing the design, construction, equipment, and operation of these vessels and the safety of personnel aboard them.

Respondents: Owners and operators of self-propelled vessels carrying liquefied gas.

Frequency: On occasion.

Burden Estimate: The estimated burden is 5,131 hours a year.

4. *Title:* Application and Permit to Handle Hazardous Materials.

OMB Control Number: 2115–0013.

Summary: The information sought here ensures the safe handling of explosives and other hazardous

materials around ports and aboard vessels. Shipping agents and terminal operators who handle the above commodities must comply.

Need: 33 U.S.C. 1225 authorizes the Coast Guard to establish standards for the handling, storage, and movement of hazardous materials on a vessel or waterfront facility. 33 CFR 126.17 and 49 CFR 176.100 and 176.415 prescribe the rules for facilities and vessels.

Respondents: Shipping agents and terminal operators that handle hazardous materials.

Frequency: On occasion.

Burden Estimate: The estimated burden is 292 hours a year.

Dated: December 7, 2001.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 01–30751 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is issuing this notice to advise the public of the date for the seventh meeting of the FAA Aircraft Repair and Maintenance Advisory Committee. The purpose of the meeting is for the Committee to continue working towards accomplishing the goals and objectives pursuant to its congressional mandate.

DATES: The meeting will be held Tuesday, December 18, 2001, 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at Federal Aviation Administration, 800 Independence Avenue, SW., Bessie Coleman Conference Center, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ellen Bowie, Federal Aviation Administration (AFS–300), 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267–9952; fax (202) 267–5115; E-mail *EllenBowie@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aircraft Repair and Maintenance Advisory Committee to be held on December 18, at the Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591.

The agenda will include:

- Committee administration.
- Reading and approval of minutes.
- Review of open/additional action items.
- Final voting on report.
- Sign off on report draft.
- Statements by members of the public.
- Final timeline review.
- Closing remarks and adjournment.

Attendance is open to the public but will be limited to the availability of meeting room space. Persons desiring to present a verbal statement must provide a written summary of remarks. Please focus your remarks on the tasks, specific activities, projects or goals of the Advisory Committee, and benefits to the aviation public. Speakers will be limited to 5-minute presentations. Please contact Ms. Ellen Bowie at the number listed above if you plan to attend the meeting or to present a verbal statement.

Individuals making verbal presentations at the meeting should bring 25 copies to give to the Committee's Executive Director. These copies may be provided to the audience at the discretion of the submitter.

Issued in Washington, DC on December 6, 2001.

David E. Cann,

Manager, Continuous Airworthiness Maintenance Division.

[FR Doc. 01–30639 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Safety Advisory: Unauthorized Cargo Tanks Used To Transport Hazardous Materials

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of identification of unauthorized cargo tanks.

SUMMARY: This notice identifies unauthorized cargo tanks and removes them from service. The FMCSA has identified non-conforming cargo tanks as the result of compliance reviews assessing compliance with Hazardous Materials Regulations. This action notifies tank owners that these tanks are not authorized to transport hazardous materials, and ensures their removal from service. The FMCSA notifies the public that MC–331 cargo tank motor vehicles assembled with designs T–5314, certified 3–10–1997 and T–5602–A, certified 9–12–1997 by Chemical Transportation Engineering Consultants, Inc., Lubbock, TX do not meet the minimum design requirements for a specification cargo tank and are no longer authorized to transport hazardous materials requiring a specification package. These tanks are no longer authorized because the rear end protection devices for these cargo tanks do not meet the minimum regulatory requirements. There is a high probability that a failure of these devices could occur during a rear end collision resulting in serious injury, death and property damage.

FOR FURTHER INFORMATION CONTACT: Mr. Joe DeLorenzo, (708) 283–3572. Midwest Service Center, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 19900 Governors Drive, Suite 210, Olympia Fields, IL 60461. Office hours are from 7:30 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 viewed and downloaded from the internet at *http://dms.dot.gov*.

Background

The FMCSA has the responsibility to ensure cargo tanks are designed and constructed in accordance with the DOT specifications. This authority is granted pursuant to 49 U.S.C. 5101 *et seq.*, as delegated to the FMCSA by the Secretary of Transportation in 49 C.F.R. 1.73(d)(1). To accomplish this mission, FMCSA performs compliance reviews of cargo tank manufacturers and assemblers and verifies the design and analysis of these cargo tanks with the recommended best practices identified in FMCSA's Guidelines for Structural Evaluation of Cargo Tanks, 1st edition, June 1996.

Although FMCSA has no recall authority, we utilize other means to remove unsafe cargo tanks from HM service until defects are corrected. Historically, FMCSA has utilized consent agreements that offer a reduction in the assessment of civil penalties if the cargo tank manufacturers and assemblers will recall and repair these defective tanks. Unfortunately there have been situations where this strategy has not always been effective and the FMCSA officially notified customers using defective cargo tanks by publishing a Safety Advisory Notice in the **Federal Register**. A recent example of the Safety Advisory Notice in the **Federal Register** was the identification of non-conforming cargo tanks manufactured by Acro Trailer Company, Springfield, MO. (attached)

On separate occasions, investigators of the Federal Motor Carrier Safety Administration (FMCSA), performed compliance reviews on Bulk Truck and Transport in Hanover, IN and Eagle Fabrication and Repair, Oak Harbor, OH. These reviews discovered that both facilities were performing functions of a cargo tank assembler by attaching rear end protection devices (bumpers) to cargo tanks. These bumpers were certified by design certifying engineers from Chemical Transportation Equipment Consultants (CTEC), Lubbock, TX to meet the requirements of 49 CFR 178.337–10. An analysis of CTEC's calculations for the design of the bumpers by structural engineers from the FHWA discovered that these bumpers failed to meet the minimum design requirements. FMCSA performed a second level independent analysis of these calculations that verified the results of the FHWA engineers. FMCSA then hired an independent consulting firm specializing in the design and analysis of cargo tanks to perform a third level review of the calculations and verify the results. Their results verified the initial and second level review that the bumpers failed to meet the minimum design requirements of the regulations.

Eagle Fabrication and Repair and Bulk Tank and Transport accepted in good faith the certification of the rear end protection device (bumper) from CTEC. An enforcement case was initiated against CTEC in an effort to remove and repair these unauthorized cargo tanks. The enforcement action resulted in the Agency issuing a Final Order served on April 9, 2001 and effective on May 24, 2001. This final order assessed CETC a civil penalty of $10,000 for violations of the HM regulation. CTEC has failed to respond to the Final Order, failed to provide design modifications to repair these unauthorized tanks, and is no longer in business. There are at least 300 cargo tanks that have not been modified to comply with the requirements. The issuance of the attached **Federal Register** Safety Advisory Notice will remove these unsafe cargo tanks from hazardous materials service by accomplishing the following:

- Notify the owners that these tanks are no longer authorized to transport hazardous materials requiring a specification cargo tank.
- Provide sufficient knowledge and willfulness for FMCSA to initiate enforcement action against any carrier who uses one of these non-conforming tanks to transport hazardous materials requiring a specification cargo tank.
- Fulfill FMCSA's responsibility for the safe transportation of hazardous materials.

Our compliance and enforcement strategies that will be utilized to ensure these unsafe cargo tanks are removed from specification service will include the following:

- The Midwest Service Center will identify the cargo tanks based on sales records or other documents from the manufacturers.
- Provide a copy of the **Federal Register** Notice to each owner via certified mail, return receipt requested. This written correspondence will also request the carrier to provide clear and convincing documentation the cargo tank motor vehicle has been modified or is no longer complying with specifications and operating as a cargo tanker.
- Use compliance reviews and other verification tools to determine if the motor carriers that are operating these tanks have made the modifications and initiate enforcement when appropriate.
- Provide the field staff a list of serial numbers, unit numbers or other unique identifier to enable the field staff and our state partners to effectively identify these tanks and provide guidance documents to determine if the modifications have been made on these tanks.

Cargo tanks represented, marked, certified or sold as a specification package for use in the bulk transportation of hazardous materials must be designed and constructed in accordance with 49 CFR 178 of the Hazardous Materials Regulations (HMR). One of the primary uses of an MC–331 cargo tank is the transportation of liquefied compressed gases. Due to the increased risk associated with the transportation of these types of material, the design specification for an MC–331 cargo tank requires these tanks to be protected from damage during rear-end or overturn accidents.

Specification MC–331 cargo tanks are manufactured in accordance with 49 CFR 178.337. This specification includes various requirements for protecting the integrity of the tank and its fittings in case of an accident. Of concern in this notice is the requirement for rear end protection devices (rear bumper) found in 49 CFR 178.337–10(d). This section states that:

> Each cargo tank shall be provided with at least one rear bumper designed to protect the tank and piping in the event of a rear end collision and minimize the possibility of any part of the colliding vehicle striking the tank. The design shall be such as to transmit the force of a rear end collision in a horizontal line to the chassis of the vehicle. The bumper shall be designed to withstand the impact of the fully loaded vehicle with a deceleration of 2 ''g'', using a safety factor of four based on the ultimate strength of the bumper material. The bumpers shall conform dimensionally to § 393.86, chapter III of this title.

The key provisions of this section are:

(1) Use of a safety factor of 4, and

(2) Basing this safety factor on the ultimate strength of the material. This means the appropriate ultimate strength of the material, such as tension, compression, shear or bending as appropriate.

During a compliance review of an MC–331 cargo tank motor vehicle assembler conducted by the Federal Motor Carrier Safety Administration (FMSCA), it was discovered that rear bumpers designed and certified by Chemical Transportation Engineering Consultants, Inc. (CTEC) did not meet the requirements of 49 CFR 178.337–10(d) of the Hazardous Materials Regulations. Engineering analysis performed on the design concluded that the rear end protection device (bumper) failed to meet the requirements of the specification. Subsequently, an independent consultant at the request of the FMCSA conducted an additional analysis and arrived at the same conclusions. They are as follows:

- CTEC incorrectly defined the ''ultimate strength'' of the material as the ultimate tensile strength when analyzing bolts subject to shear forces. As used in § 178.337–10(d) ''it means that the strength of the material corresponding to the structural action under investigation (i.e., tension, compression, shear, bending) is to be employed'' (Kulak). Shear strength is approximately 62 percent of the tensile strength.
- A safety factor of 4 is clearly required by § 178.337–10(d) when calculating the required strength of the bolts.
- When applying both the safety factor of 4 and considering the shear strength of the bolts as required by the regulation, the design of CTEC's rear end protection device (bumper) clearly does not meet the minimum requirements of § 178.337–10(d).

This design was prepared and certified by CTEC and sold to Eagle Fabrication and Repair, Oak Harbor, OH (Eagle). Eagle properly accepted the certification provided by CTEC and manufactured rear end protection devices in accordance with the designs provided by CTEC. These rear end protection devices were installed on cargo tank motor vehicles by Eagle and sold to other cargo tank motor vehicle

assemblers for installation on cargo tank motor vehicles.

Because these tanks were not equipped with a rear end protection devices designed and constructed in accordance with 49 CFR 178.337–10(d) of the Hazardous Materials Regulations, these cargo tank motor vehicles may not be represented as specification cargo tanks and may not be represented, marked, certified or sold as a specification package used to transport hazardous materials.

During a separate investigation another rear end protection device (bumper) design was discovered that failed to meet the requirements of 49 CFR 178.337–10(b). This design was prepared and certified by CTEC and sold to Bulk Truck and Transport (BT & T), Hanover, IN. BT&T properly accepted the certification provided by CTEC and manufactured rear end protection devices (bumpers) in accordance with CTEC's design. A Federal Highway Administration (FHWA) structural engineer performed engineering analysis on the design and concluded that the rear end protection device (bumper) failed to meet the requirements of the specification because CTEC failed to include the safety factor of four in the engineering analysis as required by the regulations. This preliminary analysis was reviewed by an engineer with the Federal Motor Carrier Safety Administration (FMCSA) (formerly the FHWA Office of Motor Carrier Safety) and determined to be scientifically valid.

Corrective Action to be Taken

Because the tanks equipped with rear end protection devices (bumpers) manufactured using CTEC deigns T–5314 and T–5062 failed to meet the minimum requirements of 49 CFR 178.337–10, they may not be represented, marked, certified or sold as a specification cargo tank and may not be used to transport hazardous materials that require a specification cargo tank. Motor carriers who commit knowing and willful violations of the Federal Hazardous Materials Regulations may be subject to civil and criminal penalties.

Cargo tanks assembled with the rear end protection device (bumper) design specified in this notice may only be used to transport hazardous materials if the rear end protection (bumper) device has been modified to a design that meets the requirements of 49 CFR 178.337–10. Cargo tanks which have not had appropriate modifications performed to comply with 49 CFR 178.337–10(d) must have the specification plate removed, obliterated, or covered and these tanks may not be used to transport hazardous materials requiring a specification cargo tank.

During the compliance review process fundamental errors were discovered in the engineering calculations by CTEC. These engineering calculation errors indicate other designs prepared and certified by CTEC may also not comply with the rear end protection device (bumper) requirements of the MC–331 cargo tank specification. The FMCSA is encouraging the owners of cargo tanks with rear end protection devices and anchoring systems designed and certified by CTEC to have these designs reviewed by a Design Certifying Engineer (DCE) for compliance with the requirements of the regulation.

Issued on: December 5, 2001.

Joseph M. Clapp,

Administrator.

[FR Doc. 01–30641 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement: Downtown/Natomas/Airport Corridor in Sacramento, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Sacramento Regional Transit District (RT), intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) and an Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA) for proposed transit improvements from 7th Street and K Street in downtown Sacramento, north through the South and North Natomas areas to the Sacramento International Airport. To date, 11 alternatives have been identified to be addressed in the EIS/EIR. These alternatives include a no-action alternative, Transportation Systems Demand (TSM) alternative, transit service improvements, bus service expansion alternatives, bus rapid transit (BRT) alternatives, and light rail transit (LRT) alternatives. In addition, alternatives that are identified from the scoping process will be evaluated in the EIS/EIR. Scoping will be accomplished through correspondence and discussions with interested persons; organizations; and federal, state, and local agencies; and through public and agency meetings.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered in the EIS/EIR must be received no later than January 28, 2002, and must be sent to RT at the address indicated below. Scoping Meetings: RT will conduct three identical scoping meetings. These meetings will be held on December 11, 2001 from 2 p.m. to 4 p.m. at the Regional Transit Administration Building in the Auditorium, located at 1400 29th Street, Sacramento, California 95812; on December 12, 2001 from 6 p.m. to 8 p.m. at The Club at North Natomas, located at 2101 Club Center Drive, Sacramento, California 95835; and December 13, 2001 from 6 p.m. to 8 p.m. at the South Natomas Community Center, located at 2921 Truxel Road, Sacramento, California 95833.

ADDRESSES: Written comments should be sent to Mr. David M. Melko, Policy and Program Manager, Sacramento Regional Transit District, P.O. Box 2110, Sacramento, California 95812–2110. Phone: (916) 321–2992. Fax: (916) 444–2156.

To be added to the mailing list, contact Ms. Susan Willson, Project Manager of Community Relations, The Hoyt Company, 660 J Street, Suite 444, Sacramento, California 95814, (916) 448–2440, e-mail address: *swillson@ns.net.* Please specify the mailing list for the Downtown/Natomas/Airport Corridor Alternatives Analysis/Draft Environmental Impact Statement/Report (DNA AA/DEIS/R). Persons with special needs such as sign language interpretation also should contact Susan Willson, Project Manager of Community Relations, as indicated above. The dates and addresses of the scoping meetings are given in the DATES section above. All locations are accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: To request a scoping information packet, contact Mr. David Melko, Policy and Program Manager, Sacramento Regional Transit District, P.O. Box 2110, Sacramento, California 95812–2110. Phone: (916) 321–2992. Fax: (916) 444–2156. The Federal Agency contact is Mr. Jerome Wiggins, Office of Planning and Program Development, FTA, 201 Mission Street, Room 2210, San Francisco, CA 94105. Phone: (415) 744–3115.

SUPPLEMENTARY INFORMATION:

I. Description of Study Area and Scope

The Federal Transit Administration (FTA), as joint lead agency with the

Sacramento Regional Transit District (RT), will prepare an EIS/EIR on a proposal to improve transit service in an approximately 13-mile-long corridor in north Sacramento, California. The study area begins in downtown Sacramento at 7th and K Streets. The southern terminus of the study boundary is typical of an urban downtown environment, with a mixture of land uses. Traveling north, the proposed action would cross the Union Pacific Railyard at the northern edge of downtown and the American River, possibly on a new bridge, traversing the American River Parkway at Discovery Park. It would pass through the South Natomas area (which consists of a mixture of single- and multi-family residential units, and commercial uses), cross Interstate 80 (I–80) and enter the North Natomas area (which consists of a combination of single- and multi-family residential units, commercial and light industrial uses, agricultural, and open space). The northern terminus of the proposed action is reached by crossing I–5/State Route 99, connecting to the Sacramento International Airport, located approximately 13 miles northwest of downtown Sacramento. The Airport now has a mixture of agricultural and urban uses surrounding it. RT will perform conceptual engineering for transit alternatives within the Sacramento Downtown/Natomas/Airport (DNA) Corridor for a Draft EIS/EIR that satisfies both NEPA and CEQA requirements. In addition, a financial plan will be developed that examines alternative funding sources, including airport related funding opportunities.

II. Purpose and Need

Freeways, highways, streets, and RT's 226 buses and 36 light rail vehicles are currently the primary transportation components responsible for the movement of people and goods in the Sacramento region. All types of services, such as public and private transit services, bicycles and pedestrians, use the existing highway and roadway network. Implementation of the proposed action will serve one of the fastest growing areas of the Sacramento region. The population in RT's service area is expected to grow by about 40 percent over the next 25 years and employment levels are expected to grow even faster. In the DNA Corridor, population is expected to increase by 100 percent (80,000 persons), and employment by 64 percent (83,000 jobs) by 2025. The Sacramento region is a non-attainment area for air quality and measures are needed to reduce mobile source emissions. In addition, RT's current service levels are lower than most of its peer cities of comparable size around the U.S. An expanded transit system will provide greater transportation mobility in a corridor that currently has the lowest amount of transit service in the region, and support economic development in a rapidly growing corridor.

III. Alternatives

The alternatives under consideration include a No-Action Alternative, a Transportation Systems Management (TSM) alternative, two Enhanced Bus Alternatives, two Bus Rapid Transit (BRT) Alternatives, and five Light Rail Transit (LRT) Alternatives. In addition, several sub-alternatives will be evaluated as well as any other alternatives that are identified during the public scoping process. A brief description of the alternatives is provided below. These alternatives will be developed further during the preparation of the Draft EIS/EIR.

Alternative 1: No-Action. This alternative consists of highway and transit systems existing as of year 2000, plus programmed improvements. It serves as the NEPA baseline against which the transportation, environmental, and community impacts of the other alternatives are compared.

Alternative 2: TSM Alternative. This alternative consists of all reasonable cost-effective transit service improvements within the DNA corridor that are in the financially constrained regional transportation plan, short of an investment in a New Starts project. The New Starts Program is a federal program that provides funds for qualifying bus, rail and other transit-related projects.

Alternative 3: Enhanced Bus to North Natomas Town Center. This alternative consists of major expansion in the level of bus service from downtown Sacramento to the North Natomas Town Center, including bus enhancements and high occupancy vehicle (HOV) lane capital improvements along major corridor freeways.

Alternative 4: Enhanced Bus to Sacramento International Airport. This alternative consists of major expansion in the level of bus service from downtown Sacramento to the Sacramento International Airport, including bus enhancements and HOV lane capital improvements along major corridor freeways.

Alternative 5: Bus Rapid Transit to North Natomas Town Center. This alternative consists of major expansion in the level of bus service, HOV lane capital improvements along major corridor freeways, and a Bus Rapid Transit (BRT) guideway from downtown Sacramento to the North Natomas Town Center (following the light rail alignment, including an exclusive BRT bridge across the American River at Discovery Park).

Alternative 6: Bus Rapid Transit to Sacramento International Airport. This alternative consists of major expansion in the level of bus service, HOV lane capital improvements along major corridor freeways, and a BRT guideway from downtown Sacramento to the Sacramento International Airport (following the light rail alignment, including an exclusive BRT bridge across the American River at Discovery Park).

Alternative 7: Light Rail Transit to Richards Blvd/Bus Rapid Transit to Airport. This alternative consists of modest expansion in the level of bus service, with light rail service from downtown Sacramento to Richards Boulevard and a BRT connection to the North Natomas Town Center and the Sacramento International Airport.

Alternative 8: Light Rail Transit to North Natomas Town Center Plus Modest Bus Expansion. This alternative consists of modest expansion in the level of bus service, HOV lane capital improvements along major corridor freeways, with light rail service from downtown Sacramento to the North Natomas Town Center.

Alternative 9: Light Rail Transit to Airport Plus Modest Bus Expansion. This alternative consists of modest expansion in the level of bus service, HOV lane capital improvements along major corridor freeways, with light rail service from downtown Sacramento to the Sacramento International Airport.

Alternative 10: Light Rail Transit to North Natomas Town Center Plus Major Bus Expansion. This alternative consists of major expansion in the level of bus service, HOV lane capital improvements along major corridor freeways, with light rail service from downtown Sacramento to the North Natomas Town Center.

Alternative 11: Light Rail Transit to Airport Plus Major Bus Expansion. This alternative consists of major expansion in the level of bus service, HOV lane capital improvements along major corridor freeways, with light rail service from downtown Sacramento to the Sacramento International Airport.

Sub-Alternatives or alignment options to those described above are being considered at specific locations. These include, but are not limited to:

- Interstate 5 Bridge and Landscape Corridor;
- Truxel Road (including new bridge);
- Highway 160 Bridge;

- WAPA Power Line (in South Natomas);
- Northgate Boulevard (in South Natomas);
- Market Boulevard (in North Natomas); and
- Direct access to Arco Arena.

IV. Probable Effects

The purpose of the EIS/EIR is to fully disclose the environmental consequences of building and operating a major capital investment in the DNA Corridor in advance of any decisions to commit substantial financial or other resources towards its implementation. The EIS/EIR will explore the extent to which study alternatives and alignment options result in environmental impacts and will discuss actions to reduce or eliminate such impacts.

Environmental issues to be examined in the EIS/EIR include: potential changes to the physical environment (natural resources, air quality, noise, water quality, geology, visual); changes in the social environment (land use, development, business and neighborhood disruptions); changes in traffic and pedestrian circulation; changes in transit service and patronage; associated changes in traffic congestion; and impacts on parklands and historic sites. Impacts will be identified both for the construction period and for the long-term operation of the alternatives. The proposed evaluation criteria include transportation, social, economic, and financial measures, as required by current federal (NEPA) and state (CEQA) environmental laws and the implementing regulations of the Council on Environmental Quality and of FTA.

To ensure that the full range of issues related to this proposed action will be addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS/EIR should be directed to the RT Program Manager as noted in the **DATES** section above.

V. FTA Procedures

To streamline the NEPA process and to avoid duplication of effort, the agencies involved in the scoping process will consider the results of any previous planning studies or financial feasibility studies prepared in support of a decision by the Sacramento Area Council of Governments to include a particular alternative in the regional transportation plan for metropolitan Sacramento. Prior transportation planning studies may be pertinent to establishing the purpose and need for the proposed action and the range of alternatives to be evaluated in detail in the EIS. The Draft EIS/EIR will be prepared simultaneously with conceptual engineering for the alternatives, including station and alignment options. The Draft EIS/EIR process will address the potential use of federal funds for the proposed action, including airport rleated funding opportunities, as well as assesses the social, economic, and environmental impacts of the station and alignment alternatives. Station designs and alignment alternatives will be refined to minimize and mitigate any adverse impacts.

After publication, the Draft EIS/EIR will be available for public and agency review and comment, and a public hearing will be held. Based on the Draft EIS/EIR and comments received, RT will select a locally preferred alternative for further assessment in the Final EIS/EIR and will apply for FTA approval to initiate Preliminary Engineering of the preferred alternative.

Issued on: December 5, 2001.

Leslie T. Rogers,

Region IX Administrator.

[FR Doc. 01–30640 Filed 12–11–01; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34124]

Livonia, Avon & Lakeville Railroad Corporation—Continuance in Control Exemption—B&H Rail Corp.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323–25 the control by Livonia, Avon & Lakeville Railroad Corporation, a Class III rail common carrier, of B&H Rail Corp. (B&H), upon B&H's becoming a rail carrier pursuant to a related transaction in STB Finance Docket No. 34123.[1]

DATES: This exemption is effective on January 11, 2002. Petitions to stay must be filed by December 27, 2001. Petitions to reopen must be filed by January 7, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34124 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Kevin M. Sheys, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachussets Avenue, NW., Second Floor, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1 (800) 877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1 (800) 877–8339.]

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: December 5, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–30735 Filed 12–11–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: The OCC, FDIC, and OTS (Agencies), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on proposed revisions to a continuing information collection, as

[1] On October 26, 2001, B&H filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1150.31. The notice covered the acquisition and operation of two rail lines in Steuben County, NY. See B&H Rail Corp.—Lease and Operation Exemption—Livonia, Avon & Lakeville Railroad Corporation and Norfolk Southern Railway Company, STB Finance Docket No. 34123 (STB served Nov. 13, 2001).

required by the Paperwork Reduction Act of 1995. The Agencies are soliciting comment concerning their information collection titled, ''Interagency Charter and Federal Deposit Insurance Application.'' The Agencies also give notice that they have sent the information collection to OMB for review and approval. The Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

DATES: You should submit written comments to the Agencies and the OMB Desk Officer by January 11, 2002.

ADDRESSES: Interested parties are invited to submit comments to any or all of the Agencies. All comments, which should refer to the OMB control number, will be shared among the Agencies:

OCC: Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW., Mail Stop 1–5, Attention: 1557–0014, Washington, DC 20219. You may make an appointment to inspect and photocopy comments at the same location by calling (202) 874–5043. In addition, you may fax your comments to (202) 874–4448 or E-mail them to *regs.comments@occ.treas.gov.*

FDIC: Tamara R. Manly, Management Analyst (Regulatory Analysis), Office of Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to ''Interagency Charter and Federal Deposit Insurance Application.'' Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: *comments@fdic.gov].* Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC between 9:00 a.m. and 4:30 p.m. on business days.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: 1550–0005, FAX Number (202) 906–6518, or E-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an E-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection from:

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. For subject matter information, you may contact Cheryl Martin at (202) 874–4614, Licensing Policy and Systems, Licensing Department, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

FDIC: Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Sally W. Watts, OTS Clearance Officer, (202) 906–7380; Frances C. Augello, Senior Counsel, Business Transactions Division, (202) 906–6151; Patricia D. Goings, Regulatory Analyst, Examination Policy, (202) 906–5668; or Damon C. Zaylor, Regulatory Analyst, Examination Policy, (202) 906–6787, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are proposing to extend for three years, with revision, the following currently approved information collection:

Report Title: Interagency Charter and Federal Deposit Insurance Application.

OCC's Title: Comptroller's Corporate Manual (Manual). The specific portions of the Manual covered by this notice are those that pertain to the Charter Application located in the Charters section of the Manual, which will become an interagency form.

OMB Numbers:
OCC: 1557–0014.
FDIC: 3064–0001.
OTS: 1550–0005.

Form Numbers:
OCC: None.
FDIC: 6200/05.
OTS: 138.

Affected Public: Individuals or households; businesses or other for-profit.

Type of Review: Revision of a currently approved collection.

Estimated Number of Respondents:
OCC: 50.
FDIC: 200.
OTS: 20.

Frequency of Response: One time.

Estimated Annual Burden Hours per Response:
OCC: 125.
FDIC:125.
OTS: 125.

Estimated Total Annual Burden Hours:
OCC: 6,250.
FDIC: 25,000.
OTS: 2,500.

Abstract: This submission covers a revision to the charter applications of the OCC and OTS and the deposit insurance application of the FDIC. The proposed form will make the application form uniform among the Agencies and is titled, ''Interagency Charter and Federal Deposit Insurance Application.'' The Agencies need the information to ensure that the covered proposed activities are permissible under law and regulation and are consistent with safe and sound banking practices. For example, the Agencies are required to consider financial and managerial resources, future earnings prospects, and community reinvestment. Further, the Agencies use the information to evaluate specific individuals' qualifications. Both financial institutions and individuals organizing a financial institution must provide this information.

Current Actions: A task force of the Federal Financial Institutions Examination Council (FFIEC) has adapted, reformatted, and retitled the collection: Interagency Charter and Federal Deposit Insurance Application, pursuant to the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI). Comments were solicited in the **Federal Register** on September 18, 2001 (66 FR 48168). The agencies received one comment on the form. The comment is summarized in each agency's OMB submission.

Comments: All comments will become a matter of public record. Written comments are invited on:

a. Whether the information collection is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection 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: December 4, 2001.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated at Washington, DC, this 3rd day of December, 2001.

Robert E. Feldman,

Executive Secretary.

Dated: December 5, 2001.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division,Office of Thrift Supervision.

[FR Doc. 01–30646 Filed 12–11–01; 8:45 am]

BILLING CODE 4810–33–P, 6714–01–P, and 6720–01–P

Federal Register

Wednesday,
December 12, 2001

Part II

The President

Order of December 10, 2001—Designation Under Executive Order 12958

Federal Register
Vol. 66, No. 239
Wednesday, December 12, 2001

Presidential Documents

Title 3—

The President

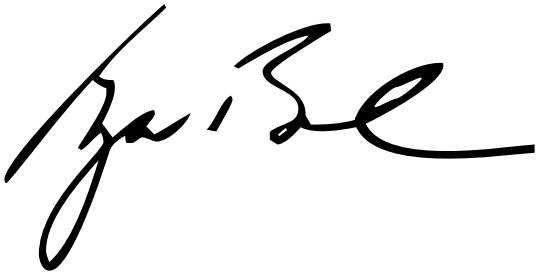
Order of December 10, 2001

Designation Under Executive Order 12958

Pursuant to the provisions of section 1.4 of Executive Order 12958 of April 17, 1995, entitled ''Classified National Security Information,'' I hereby designate the Secretary of Health and Human Services to classify information originally as ''Secret.''

Any delegation of this authority shall be in accordance with section 1.4(c) of Executive Order 12958.

This order shall be published in the **Federal Register**.



THE WHITE HOUSE,
December 10, 2001.

[FR Doc. 01–30886
Filed 12–11–01; 11:31 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 66, No. 239

Wednesday, December 12, 2001

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–3447**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.nara.gov/fedreg**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://hydra.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

60139–62906 3
62907–63148 4
63149–63306 5
63307–63486 6
63487–63620 7
63621–63904 10
63905–64094 11
64095–64348 12

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7507 62907
7508 62909
7509 62911
7510 63149
7511 63899
7513 64095

Executive Orders:
11582 (See EO 13238) 63903
12958 (See Order of December 10, 2001) 64347
13238 63903

Orders:
Order of December 10, 2001 64347

Administrative Orders:
Presidential Determinations:
No. 02–07 of November 21, 2001 63487

5 CFR

302 63905
317 63905
330 63905
333 63905
335 63905
534 63906
591 63906
930 63906
6001 60139

Proposed Rules:
890 64160

7 CFR

301 63151

Proposed Rules:
352 63005
1410 63339

9 CFR

70 63588
78 63910
88 63588
94 .....62913, 63910, 63911

10 CFR

Proposed Rules:
72 63964

Proposed Rules:
94 63633

12 CFR

5 62914

Proposed Rules:
Ch. IX 63008
584 63517

14 CFR

39 .....60140, 60143, 60144, 60145, 62915, 63154, 63157, 63159, 63307, 63621, 63912, 63913, 63915, 64097, 64099, 64100, 64102, 64104, 64105, 64107, 64109, 64112, 64114, 64116, 64117, 64119, 64121, 64124, 64125, 64128, 64129, 64132, 64133, 64135, 64138
71 .....63489, 63623
73 63433
91 63888
93 63294
97 .....64139, 64141
107 63474
108 63474

Proposed Rules:
39 .....63009, 63010, 63341
71 .....60162, 63517

15 CFR

801 .....63916, 63918

16 CFR

3 64142
4 64142
305 63749

18 CFR

381 63162

19 CFR

12 63490

20 CFR

655 63298

Proposed Rules:
404 63634

21 CFR

510 .....63163, 63164, 63499
520 .....63165, 63166
524 63164
556 62916
558 .....62916, 63499, 63500

Proposed Rules:
500 63519
1310 64173

24 CFR

30 63436

26 CFR

1 63920
602 64076

Proposed Rules:
1 63203

29 CFR

578 63501
579 63501

580 63501

30 CFR

256 60147
944 62917
Proposed Rules:
936 63968

31 CFR

211 63623

33 CFR

100 63624
117 ....62935, 62936, 62938, 62939, 62940, 63626, 63627
165 ....60151, 62940, 64144
Proposed Rules:
1 63640
147 63642
175 63645
181 63650

34 CFR

Proposed Rules:
Ch. VI 63203

37 CFR

201 ....62942, 63920

38 CFR

17 ....63446, 63449
20 60152
Proposed Rules:
3 64174

40 CFR

8 63454
52 ....63311, 63921, 64146, 64148
62 ....63311, 63938, 64151, 64152
63 63313
70 ....62945, 62946, 62949, 62951, 62954, 62961, 62967, 62969, 63166, 63168, 63170, 63175, 63180, 63184, 63188, 63318, 63503
180 63192
261 ....60153, 62973
271 63331
721 63941
Proposed Rules:
52 ....63204, 63343, 63972, 63982, 64176
60 64176
62 ....63985, 64207, 64208
80 60153

42 CFR

411 60154
1001 ....62980, 63749

43 CFR

3600 63334
3610 63334
3620 63334
3800 63334

44 CFR

64 63627
Proposed Rules:
61 60176

47 CFR

1 62992
25 63512
73 ....60156, 60157, 63199, 63629
76 62992
101 63512
Proposed Rules:
51 63651
73 ....63209, 63653, 63654, 63986, 63997

48 CFR

202 63334
212 63335
215 63334
217 63336
237 63335
242 63334
Proposed Rules:
235 63348

49 CFR

241 63942
571 ....60157, 64154
Proposed Rules:
107 63096
171 63096
172 63096
173 63096
177 63096
178 63096
180 63096
219 64000
573 ....64078, 64087
577 ....64078, 64087

50 CFR

17 ....62993, 63752
600 63199
622 60161
635 63003
648 63003
660 ....63199, 63630
Proposed Rules:
17 ....63349, 63654
20 63665
21 ....63349, 63665
648 ....63013, 63666

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 12, 2001

FEDERAL TRADE COMMISSION

Practice and procedure:

Technical amendments; published 12-12-01

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Beef promotion and research; comments due by 12-18-01; published 10-19-01 [FR 01-26395]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Bovine spongiform encephalopathy; disease status change—

Japan; comments due by 12-17-01; published 10-16-01 [FR 01-25953]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Mediterranean fruit fly; comments due by 12-18-01; published 10-19-01 [FR 01-26329]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 12-20-01; published 12-5-01 [FR 01-30112]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Architect-engineer contractors selection; new consolidated form; comments due by 12-18-01; published 10-19-01 [FR 01-26203]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Cost-reimbursement contracts for services; prompt payment; comments due by 12-21-01; published 10-22-01 [FR 01-26298]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Fixed-price construction contracts; payments; comments due by 12-17-01; published 10-18-01 [FR 01-26009]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Veterans Entrepreneurship and Small Business Development Act of 1999; implementation; comments due by 12-21-01; published 10-22-01 [FR 01-26300]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):

Standard generator interconnection agreements and procedures; comments due by 12-21-01; published 11-1-01 [FR 01-27438]

Practice and procedure:

Natural gas pipelines and transmitting public utilities (transmission providers); standards of conduct; comments due by 12-20-01; published 11-5-01 [FR 01-27674]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Hydrochloric acid production facilities; extension of comment period; comments due by 12-19-01; published 11-19-01 [FR 01-28857]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Pesticide active ingredient production; comments due by 12-21-01; published 11-21-01 [FR 01-29098]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Pesticide active ingredient production; comments due by 12-21-01; published 11-21-01 [FR 01-29099]

Air pollution control; new motor vehicles and engines:

Nonroad large spark ignition engines and recreational engines (marine and land-based); emissions control; comments due by 12-19-01; published 10-5-01 [FR 01-23591]

Correction; comments due by 12-19-01; published 11-2-01 [FR 01-27466]

Air pollution; standards of performance for new stationary sources:

Large municipal waste combustors; emission guidelines, etc.; comments due by 12-17-01; published 11-16-01 [FR 01-28085]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:

Large municipal waste combustors; emission guidelines, etc.; comments due by 12-17-01; published 11-16-01 [FR 01-28084]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Kansas; comments due by 12-19-01; published 11-19-01 [FR 01-28858]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; State authority delegations:

Arizona; comments due by 12-17-01; published 11-16-01 [FR 01-28342]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; State authority delegations:

Arizona; comments due by 12-17-01; published 11-16-01 [FR 01-28343]

Air quality implementation plans; approval and promulgation; various states:

Missouri; comments due by 12-17-01; published 11-15-01 [FR 01-28520]

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Arizona; comments due by 12-19-01; published 11-19-01 [FR 01-28859]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 12-17-01; published 11-15-01 [FR 01-28341]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 12-17-01; published 11-16-01 [FR 01-28344]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 12-17-01; published 11-16-01 [FR 01-28345]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Maryland; comments due by 12-17-01; published 11-15-01 [FR 01-28187]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Maryland; comments due by 12-17-01; published 11-15-01 [FR 01-28188]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Missouri; comments due by 12-17-01; published 11-15-01 [FR 01-28519]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Missouri; comments due by 12-17-01; published 11-16-01 [FR 01-28737]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and

promulgation; various States:
Montana; comments due by 12-17-01; published 11-15-01 [FR 01-28189]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
Montana; comments due by 12-17-01; published 11-15-01 [FR 01-28190]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:
New York; comments due by 12-17-01; published 11-16-01 [FR 01-28627]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:
New York; comments due by 12-17-01; published 11-16-01 [FR 01-28628]

Superfund program:
Toxic chemical release reporting; community right-to-know—
Alloys corrosion; report; comments due by 12-20-01; published 8-22-01 [FR 01-21198]

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:
Connecticut; comments due by 12-17-01; published 10-31-01 [FR 01-27346]

Radio stations; table of assignments:
Alabama; comments due by 12-18-01; published 10-24-01 [FR 01-26751]
Texas; comments due by 12-17-01; published 11-8-01 [FR 01-28074]

Television broadcasting:
Noncommercial educational television; television table of allotments amendment to delete noncommercial reservation of Channel 16 in Pittsburgh, PA; comments due by 12-17-01; published 10-16-01 [FR 01-25997]

GENERAL SERVICES ADMINISTRATION

Acquisition regulations:
Real property leasehold interests; historic preference; comments due by 12-18-01; published 10-19-01 [FR 01-26446]

Federal Acquisition Regulation (FAR):
Architect-engineer contractors selection; new consolidated form; comments due by 12-18-01; published 10-19-01 [FR 01-26203]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Cost-reimbursement contracts for services; prompt payment; comments due by 12-21-01; published 10-22-01 [FR 01-26298]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Fixed-price construction contracts; payments; comments due by 12-17-01; published 10-18-01 [FR 01-26009]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Veterans Entrepreneurship and Small Business Development Act of 1999; implementation; comments due by 12-21-01; published 10-22-01 [FR 01-26300]

LABOR DEPARTMENT

Employment and Training Administration

Aliens:
Labor certification and petition process for temporary employment of nonimmigrant aliens in U.S. agriculture; fee structure modification; comments due by 12-17-01; published 10-24-01 [FR 01-26867]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Architect-engineer contractors selection; new consolidated form; comments due by 12-18-01; published 10-19-01 [FR 01-26203]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Cost-reimbursement contracts for services; prompt payment; comments due by 12-21-01; published 10-22-01 [FR 01-26298]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Fixed-price construction contracts; payments; comments due by 12-17-01; published 10-18-01 [FR 01-26009]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Veterans Entrepreneurship and Small Business Development Act of 1999; implementation; comments due by 12-21-01; published 10-22-01 [FR 01-26300]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
Investment and deposit activities, and corporate credit unions—
Capital and credit concentration limits; comments due by 12-20-01; published 9-21-01 [FR 01-23290]

NUCLEAR REGULATORY COMMISSION

Federal claims collection; comments due by 12-19-01; published 10-5-01 [FR 01-25000]

STATE DEPARTMENT

Irish Peace Process Cultural and Training Program; comments due by 12-17-01; published 10-16-01 [FR 01-25598]

Visas; nonimmigrant documentation:
Irish Peace Process Cultural and Training Program; Q classification; comments due by 12-17-01; published 10-16-01 [FR 01-25597]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 12-19-01; published 11-19-01 [FR 01-28795]
Bombardier; comments due by 12-19-01; published 11-19-01 [FR 01-28797]
British Aerospace; comments due by 12-21-01; published 11-19-01 [FR 01-28809]
CFM International, S.A.; comments due by 12-18-01; published 10-19-01 [FR 01-26325]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Eurocopter France; comments due by 12-17-01; published 10-16-01 [FR 01-25694]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Honeywell; comments due by 12-18-01; published 10-19-01 [FR 01-26323]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
McDonnell Douglas; comments due by 12-17-01; published 10-17-01 [FR 01-25663]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
McDonnell Douglas; comments due by 12-17-01; published 10-16-01 [FR 01-25662]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Pilatus Britten-Norman Ltd.; comments due by 12-21-01; published 11-23-01 [FR 01-29192]
Pratt & Whitney; comments due by 12-20-01; published 11-20-01 [FR 01-28707]

Airworthiness standards:
Special conditions—
Gulfstream G-1159, G-1159A, G-1159B series airplanes; comments due by 12-17-01; published 11-16-01 [FR 01-28676]

Class E5 airspace; comments due by 12-20-01; published 11-20-01 [FR 01-28496]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:
Design-build contracting; comments due by 12-18-

01; published 10-19-01 [FR 01-26234]

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alchohol, tobacco, and other excise taxes:

Tobacco products and cigarette papers and tubes—

Removal from manufacturer's premises for experimental purposes; application requirement eliminated; comments due by 12-17-01; published 10-17-01 [FR 01-25843]

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Acceptable evidence from foreign countries; comments due by 12-18-01; published 10-19-01 [FR 01-26382]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.J. Res. 76/P.L. 107–79

Making further continuing appropriations for the fiscal year 2002, and for other purposes. (Dec. 7, 2001; 115 Stat. 809)

Last List November 30, 2001

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.