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Title 3—

The President

Proclamation 7680 of May 21, 2003

National Maritime Day, 2003

By the President of the United States of America

A Proclamation

Today, as in the past, America depends on our maritime services to help ensure our security, promote our prosperity, and advance the universal hope of freedom. We honor the service and proud history of our merchant mariners and also recognize their important contributions in strengthening our economy.

For generations, merchant marines and commercial sailors have assisted in the defense of our Nation. Most recently, more than 5,000 merchant mariners supported Operations Enduring Freedom and Iraqi Freedom by serving aboard 157 ships moving essential supplies to our troops. As they continue to support our troops in the ongoing war on terror, their mission continues to be dangerous and difficult, and remains vital to our efforts to defend the peace.

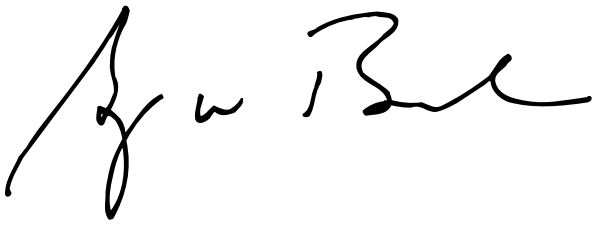
We also remember the vital role the Merchant Marine has played in past conflicts. More than 6,000 merchant mariners lost their lives during World War II, and more than 700 U.S. merchant ships were lost. Even before the United States declared war, merchant mariners were making perilous runs to Europe with desperately needed supplies. President Franklin Roosevelt, the first President to issue a proclamation honoring merchant mariners, wrote of their role during wartime: ''They have delivered the goods when and where needed in every theater of operations and across every ocean in the biggest, the most difficult and dangerous transportation job ever undertaken.'' We are grateful for the contributions and sacrifices of America's merchant mariners before and after World War II, in Korea, Vietnam, the Persian Gulf, and around the world today.

In addition to their efforts to support our troops, merchant marines play a vital role in moving the goods that we produce around the United States and throughout the world. Their work provides jobs and economic benefits to our country, and strengthens our economy. By operating as the eyes and ears of America at sea, they also help protect our homeland.

In recognition of the importance of the U.S. Merchant Marine, the Congress, by joint resolution approved on May 20, 1933, as amended, has designated May 22 of each year as ''National Maritime Day,'' and has authorized and requested that the President issue an annual proclamation calling for its appropriate observance.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 22, 2003, as National Maritime Day. I call upon the people of the United States to celebrate this observance and to display the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



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Rules and Regulations

Federal Register
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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.

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DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 500

National Arboretum

AGENCY: Agricultural Research Service; Research, Education, and Economics; USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is revising a schedule of fees to be charged for certain uses of the facilities, grounds, and services at the United States National Arboretum (USNA).

DATES: This rule is effective May 28, 2003.

ADDRESSES: Address all correspondence to Thomas S. Elias, Director, U.S. National Arboretum, Beltsville Area, Agricultural Research Service, 3501 New York Avenue, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Thomas S. Elias, Director, National Arboretum, Beltsville Area, ARS, 3501 New York Avenue, NE., Washington, DC 20002; (202) 245–4539.

SUPPLEMENTARY INFORMATION: This final rule was published as a proposed rule for comment on April 10, 2002 (67 FR 17301). No comments were received. Accordingly, the proposed rule is published as the final rule without changes.

Classification

This final rule has been reviewed under Executive Order 12866, and it has been determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This final rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Department of Agriculture certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354, as amended (5 U.S.C. 601, *et seq.*).

Paperwork Reduction Act

This rule does not alter the reporting or recordkeeping requirements contained in the proposed rule. Those requirements have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned OMB control number 0518–0024 for the use of facilities or the performance of photography/cinematography at the U.S. National Arboretum.

Background

Section 890(b) of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127 (1996 Act), expands the authorities of the Secretary of Agriculture to charge reasonable fees for the use of USNA facilities and grounds as well as enter into a concession agreement for the provision of food services on the grounds. These new authorities include the ability to charge fees for temporary use by individuals or groups of USNA facilities and grounds in furtherance of the mission of the USNA. Also, authority is provided to charge fees for the use of USNA facilities and grounds for commercial photography and cinematography. All rules and regulations noted in 7 CFR 500, subpart A, Conduct on the U.S. National Arboretum Property, will apply to individuals or groups granted approval to use the facilities and grounds.

Fee Schedule for Tours

The USNA operates a 48-passenger tram (which accommodates 2 wheelchairs) to provide mobile tours throughout the USNA grounds. This rule changes the fee to be charged to all riders as well as the amount to be charged for pre-scheduled group tram tours. Additionally, a fee will be charged for providing tour guides for pre-scheduled non-tram tours. Fee amounts were determined after a survey of similar services provided by other Arboreta and Botanical Gardens and an analysis of costs associated with the program. Fees generated will be used to offset costs or for the purposes of promoting the mission of the USNA.

Fee Schedule for Use of Facilities and Grounds

This rule modifies the fees for temporary use by individuals or groups of USNA facilities and grounds. The fees are established based on actual costs (*i.e.*, electricity, heating, water, maintenance, security, scheduling, *etc.*). Facilities and grounds are available by reservation at the discretion of the USNA Director or designee and may be available to individuals or groups in furtherance of the mission of the USNA. Agency initiatives may be granted first priority. Reservation requests should be made as far in advance of the need as possible to ensure consideration.

Fee Schedule for Use of Facilities and Grounds for Purposes of Photography or Cinematography

This rule modifies the fee for the use of the facility or grounds for the purposes of commercial photography or cinematography. The fees are established based on comparable opportunities provided by other Arboreta and Botanical Gardens across the nation. USNA facilities and grounds are available for use for the purpose of commercial photography or cinematography at the discretion of the USNA Director. Requests for use should be made a minimum of two weeks in advance of required date. The USNA Director may waive fees, and the USNA does not intend for photography or cinematography relating to media stories concerning the USNA and its mission or for other noncommercial, First Amendment activity.

Payment Submission Requirements

Payment for use of the tram must be made by cash or money order (in U.S. funds) and is due at the time of ticket purchase. Payment for pre-scheduled tram tours should be made at least two weeks in advance and must be made by cash or check. Payment for pre-scheduled, non-tram guided tours should be made at least two weeks in advance of tour date and must be made by cash or check. Fee payments for use of facilities or grounds or for photography and cinematography must be made in advance of requested date. These payments must be made in the form of a check or money order. Checks and money orders must be made payable, in U.S. funds, to the U.S. National Arboretum. The USNA will provide receipts to requesters for their records or billing purposes. USNA is pursuing opportunities to enter an agreement to allow USNA visitors and users to make payment in the form of a credit card. If USNA enters into such an agreement, USNA visitors and users who are assessed user fees may pay those fees with a credit card subject to the terms and conditions of such agreement.

Food Services

The USNA entered into a concession agreement for the provision of food services at the USNA facility. Snacks and small food items are available for visitors to purchase at established commercial prices. Hours of operation depend on volume of visitors. Box lunches may be pre-arranged by the requestor with the concessionaire for a set fee.

List of Subjects in 7 CFR Part 500

Agricultural research, Federal buildings and facilities, Government property, National Arboretum.

■ For the reasons set out in the preamble, 7 CFR part 500 is amended by revising subpart B to read as set forth below:

PART 500—NATIONAL ARBORETUM

Subpart B—Fee Schedule for Certain Uses of National Arboretum Facilities and Grounds

Sec.
500.20 Scope.
500.21 Fee schedule for tours.
500.22 Fee schedule for use of facilities and grounds.
500.23 Fee schedule for photography and cinematography on grounds.
500.24 Payment of fees.
500.25 Food services.

Authority: 20 U.S.C. 196; secs. 2, 4, 62 Stat. 281; sec. 103, 63 Stat. 380; sec. 205(d), 63 Stat. 389.

Subpart B—Fee Schedule for Certain Uses of National Arboretum Facilities and Grounds.

§ 500.20 Scope.

The subpart sets forth schedules of fees for temporary use by individuals or groups of United States National Arboretum (USNA) facilities and grounds for any purpose that is consistent with the mission of the USNA. This part also sets forth schedules of fees for the use of the USNA for commercial photography and cinematography. Fees generated will be used to offset costs of services or for the purposes of promoting the mission of the USNA. All rules and regulations noted in 7 CFR 500, subpart A—Conduct on the U.S. National Arboretum Property, will apply to individuals or groups granted approval to use the facilities and grounds for the purposes specified in this subpart.

§ 500.21 Fee schedule for tours.

The USNA provides tours of the USNA grounds in a 48-passenger tram (accommodating 2 wheelchairs) for a fee as follows: $4.00 per adult; $3.00 per senior citizen or Friend of the National Arboretum; $2.00 per child through age 16. Pre-scheduled tram tours for groups may be arranged for a set fee of $125.00. Additionally, a professional tour guide may be pre-arranged to provide a non-tram tour for the fee of $50 per hour. Promotional programs offering discounted fees for these programs may be instituted at the discretion of the USNA.

§ 500.22 Fee schedule for use of facilities and grounds.

The USNA will charge a fee for temporary use by individuals or groups of USNA facilities and grounds. Facilities and grounds are available by reservation at the discretion of the USNA and may be available to individuals or groups whose purpose is consistent with the mission of the USNA. Agency initiatives may be granted first priority. Non profit organizations that substantially support the mission and purpose of the USNA may be exempted from the requirements of this part by the Director. Reservation requests should be made as far in advance of the need as possible to ensure consideration. The following are the fees for use of USNA buildings: ''Half Day'' usage is defined as 4 hours or less; ''Whole Day'' is defined as more than 4 hours in a day. For outside normal business hours, usage of such buildings and facilities requires an additional $40/hour for supervision/security. Additionally, at the discretion of the USNA, custodial fees may be assessed in the amount of $25 per hour.

Area	Includes—	Per day charge	
		Half day	Whole day
Auditorium	Basic audience-style set-up for 125 people or classroom set-up for 40–50 people. Includes microphone/lectern, screen, 4–6′ tables projection stand, (2) flip charts (on paper) and (2) trash cans. Also includes the use of the Kitchen space, Upstairs Conference Room, and Coat Room.	N/A	$250
	Extra tables are $10 each		
Upstairs Conference Room	(Only if Auditorium is not in use)	$50	100
	Includes use of telephone for local calls. Also includes the non-exclusive use of the Kitchen space and Coat Room		
Lobby	As is (with furniture in place)	N/A	100
	Furniture removed		150
	Set up with tables and chairs		100
Classroom	Standard set-up with 40 chairs	50	125
	Includes microphone/lectern, screen, projection stand, (2) flip charts (no paper) and trash can.		
Classroom—Multiple	5 sessions or more	45	90
Yoshimura Center	For use from 10:00 a.m. to 3:30 p.m. weekends only	50	125
	Set up with tables and chairs	100	100

Area	Includes—	Per day charge	
		Half day	Whole day
Grounds—1–300 people	NO PUBLIC INVITED Patio, Meadow, Triangle, NY Avenue, etc. Cost includes scheduling time, extra mowing, and site preparation. Guest organizations responsible for everything related to event, including portable toilets..	N/A	500
301–600 people	Same as above	N/A	750
Grounds	PUBLIC INVITED (*i.e.*, show or sale) Cost includes scheduling time, extra mowing, and site preparation. Guest organization responsible for everything related to event, including portable toilets.	N/A	750
Damages	Damages to plants, grounds, facilities or equipment will be assessed on a value based on replacement cost (including labor) plus 10% (administrative fee).		

§ 500.23 Fee schedule for photography and cinematography on grounds.

The USNA will charge a fee for the use of the facility or grounds for the purposes of commercial photography or cinematography. Facilities and grounds are available for use for commercial photography or cinematography at the discretion of the USNA Director. Requests for use should be made a minimum of two weeks in advance of the required date. In addition to the fees listed below, supervision/security costs of $40.00 per hour will be assessed. The USNA Director may waive fees for photography or cinematography conducted for the purpose of disseminating information to the public regarding the USNA and its mission, or for the purpose of other noncommercial, First Amendment activity.

Category and type	Notes	Per day charge	
		Half day	Whole day
Still Photography:			
Individual	For personal use only. Includes hand-held cameras, recorders, small non-commercial tripods.	No Charge	No Charge
Commercial and Wedding	Includes all photography which uses professional photographer and/or involves receiving a fee for the use or production of the photography. Note: This includes 5 people or less with carry on (video) equipment. Includes Wedding Party Photography.	$250 plus Supervisor.	$500 plus Supervisor
Cinematography:			
Set Preparation	Set up sets; no filming performed	N/A	250 plus Supervision
Filming	Sliding scale based on number of people in cast and crew and number of pieces of equipment. 45 people and 6 pieces of equipment = $1,500. 200 people = $3,900. Note: 5 people with carry on equipment = same as still photography.		1,200 to 3,900
Strike Set	Take down sets, remove equipment; no filming	N/A	250 plus Supervision.
Music Videos	No sound involved; smaller operation	N/A	1,000 plus Supervision.
Damages: All	Damages to plants, grounds, facilities or equipment will be assessed on a value based on replacement cost (Including labor) plus 10% (administrative fee).. Half Day = 4 hours or less. Full Day = More than 4 hours.	.	

§ 500.24 Payment of fees.

Payment for use of the USNA tram must be made by cash or money order (in U.S. funds) and is due at the time of ticket purchase. Payment for pre-scheduled tram tours or tour guides should be made at least two weeks in advance and must be made by cash or check. Fee payments for use of facilities or grounds (including security and custodial fees) or for photography and cinematography must be made in advance of required date. These payments must be made in the form of a check or money order. Checks and money orders must be made payable, in U.S. funds, to the ''U.S. National Arboretum.'' USNA will provide receipts to requesters for their records or billing purposes. OMB approved the information collection requirements in this regulation and assigned control number 0518–0024.

§ 500.25 Food Services.

The USNA entered into a concession agreement for the provision of food services on the facility. Snacks and small food items may be available for visitors to purchase at established commercial prices. Hours of operation depend on volume of visitors. Box lunches may be pre-arranged with the concessionaire for a set fee.

Done at Washington, DC, this 2nd day of May, 2003.

Caird E. Rexroad,

Acting Administrator, Agricultural Research Service.

[FR Doc. 03–12857 Filed 5–23–03; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–377–AD; Amendment 39–13151; AD 2003–10–06]

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 repetitive inspections for cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, and repair, if necessary. For certain airplanes, the AD also provides an optional modification of the lower lobe cargo door cutout, which ends the pre-modification repetitive inspections, but necessitates new post-modification repetitive inspections after a certain time. The actions specified by this AD are intended to find and fix cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, which could lead to reduced structural integrity of the lower lobe cargo door cutout, and result in rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 1, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 2003.

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: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6434; fax (425) 917–6590.

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 as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 21, 2002 (67 FR 42207). That action proposed to require repetitive inspections for cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, and repair, if necessary. For certain airplanes, the action also proposed to provide an optional modification of the lower lobe cargo door cutout, which would end the pre-modification repetitive inspections, but would necessitate new post-modification repetitive inspections after a certain time. The action also proposed to expand the optional modification of the lower lobe cargo door cutout specified in the NPRM and reduce the compliance threshold for the existing post-modification 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.

One commenter concurs with the proposed rule.

Request To Allow Modification/Repair Per Structural Repair Manual (SRM)

Two commenters ask that accomplishment of the modification/repair required by the proposed AD per SRM Chapter 53–30–03, Figure 62, or Chapter 53–60–01, Figure 204, be allowed as terminating action for the repetitive inspections. The first commenter states that, according to information received from the manufacturer, repair per SRM Chapter 53–30–03, Figure 62, terminates the repetitive inspections specified in Boeing Service Bulletin 747–53A2448, Revision 1, dated April 4, 2002 (referenced in the proposed rule as the appropriate source of service information for accomplishment of the inspections). The commenter adds that post-modification inspections are done per the Repair Assessment Program required by section 121.370 (''Repair assessment for pressurized fuselages'') of the Federal Aviation Regulations (14 CFR 121.370). The second commenter states that, according to information received from the manufacturer, the repair doubler installation is terminating action for the repetitive inspections, and post-repair inspections should be done per the inspection program defined in the SRM.

The FAA partially agrees with the commenters. We agree that repairs done per Revision 1 of the referenced service bulletin, and the post-repair inspections defined in the applicable SRMs and listed in the service bulletin, terminate the repetitive inspections required by paragraph (a) of the proposed AD for the repaired area only. We have changed paragraph (c) of the final rule (paragraph (b) of the proposed rule) to specify such terminating action. However, we have determined that compliance with section 121.370 of the Federal Aviation Regulations (14 CFR 121.370) does not meet the post-repair inspection requirements specified in this AD. This is because the repair assessment guidelines approved for Model 747 series airplanes are applicable only for normal skin surface structure, not for underlying stringers, frames, supporting structure and fuselage cutouts. Therefore, the Repair Assessment Program is not acceptable for doing the post-repair inspections required by this AD. No change to the final rule is necessary in this regard.

Request To Change Paragraph (b) or (d)

One commenter states that it has frequently found cracking in the area specified in the proposed AD, and has installed many repairs that were approved by a Boeing Company Designated Engineering Representative (DER) who will presumably be granted alternative method of compliance (AMOC) approval authority by the Manager of the Seattle Aircraft Certification Office (ACO). Since so many repairs have been installed, the commenter asks that paragraph (b) or (d) of the proposed AD be changed, or that a new repair paragraph be added. This would allow a repair previously approved per data meeting the type certification basis of the airplane approved by a Boeing DER who has been authorized by the Manager, Seattle ACO, to make such findings, as an acceptable repair method that meets the requirements of the proposed AD. The commenter adds that making this change would prevent operators with previously issued forms for approved repairs from resubmitting the forms with the AD number included.

We do not agree with the commenter. Repairs previously approved by a Boeing DER do require new approval as an AMOC. AMOC delegation to a DER requires findings of compliance that include all the design considerations, practices, and load cases used during the certification process, even if those defined in part 25 (''Airworthiness Standards: Transport Category Airplanes'') of the Federal Aviation Regulations (14 CFR part 25) are exceeded. A non-AMOC repair approval may or may not include all of these

considerations, and only complies with part 25 of the Federal Aviation Regulations (14 CFR part 25) as a minimum. For this reason, paragraph (e) of the final rule requires that repair approval must specifically refer to this AD. No change to the final rule is necessary in this regard.

Request for Credit for Modification Per Original Issue of Service Bulletin

One commenter states that paragraph (c) of the proposed AD describes optional modification and post-modification inspections per Revision 1 of the referenced service bulletin; however, the commenter notes that operators may already have done the modification of the area specified per the original issue of that service bulletin. The commenter adds that information received from the manufacturer suggests that airplanes modified per the original issue should have additional inspections and modifications. The manufacturer recommends (and the commenter agrees) that these actions should be done within 3,000 flight cycles or 18 months after the initial modification.

Although the commenter does not specifically ask for a change to the proposed AD, we infer that the commenter wants credit for airplanes previously modified per the original issue of the service bulletin, and confirmation that the additional actions recommended by the manufacturer are indeed required. We agree that any operator that has done the modifications per the original issue of the service bulletin is required to do additional inspections and modifications per Revision 1 of the service bulletin. With regard to actions accomplished per the original issue of the service bulletin that correspond to actions in Revision 1 of the service bulletin, we already give credit for actions accomplished before the effective date of an AD by means of the phrase ''Compliance: Required as indicated, unless accomplished previously,'' which appears in every AD. Therefore, no change to the final rule is necessary in this regard.

Request To Reference Existing AD and Relation to New AD

One commenter states that the proposed AD affects an area that is the subject of AD 94–15–18, amendment 39–8989 (59 FR 41233, August 11, 1994), and Boeing 747 Supplemental Structural Inspection Document (SSID) D6–35022, and can affect Structurally Significant Item (SSI) F–39E. The commenter asks that any related requirements between the new AD and the existing AD be discussed. The commenter adds that the effect of repairs, modifications, and duplication of inspections done per the existing AD should be reviewed, and a determination made of whether one set of AD requirements meets the existing AD requirements.

We have been informed by the manufacturer that the Boeing 747 SSID is being revised to remove the portions of SSI F–39 inspections that are required by this AD. This revision to the Boeing 747 SSID may be approved as an alternative method of compliance to AD 94–15–18, which would eliminate the potential for duplication of inspections. In addition, repairs and modifications done per the existing AD will not be affected by the requirements in this AD. Therefore, no change to the final rule is necessary in this regard.

Request To Withdraw Proposed AD

One commenter disagrees that the cracking found in the upper corners of the aft lower cargo door cutout constitutes an unsafe condition that warrants regulatory action. The commenter states that the cracks reported by Boeing in the referenced service bulletin were small and did not pose an imminent threat of rapid depressurization. The commenter notes that the robust structure of the lower lobe cargo door cutout mitigates threats from minor skin cracks. The commenter adds that cracks found on the commenter's airplanes were found as a result of routine maintenance inspection, proving that existing inspection and maintenance programs will detect cracking in the subject areas before an unsafe condition exists. The commenter states that a minor revision to the maintenance program would ensure adequate crack detection, without the need for additional regulatory action.

We do not agree with the commenter. Cracks over one inch in length have been found in both the fuselage skin and the adjacent bear strap. If cracks propagate into the sill chord, rapid decompression could occur. The door hinge fairing also covers up the area of cracking, making it unlikely that all cracks will be detected by routine maintenance inspections. No change to the final rule is necessary in this regard.

Request To Change Cost Impact Analysis

One commenter states that the FAA estimate of approximately 3 work hours to accomplish the proposed inspection does not include the time required to gain access and close-up. In the case of this AD, some of the associated access and close-up time, including removing and re-installing fasteners and fittings, is not incidental, and is only required for this particular inspection procedure. The commenter notes that those costs should be included in the cost impact analysis. The commenter adds that the other costs, such as access and closeup of seats, carpet, cargo handling equipment, floor panels, and insulation blankets, may be incidental during some scheduled heavy maintenance inspections, but would not be incidental if done during a special maintenance visit.

We do not agree to change the number of estimated work hours for the inspections. The number of work hours necessary to accomplish the inspections, specified as 3 in the cost impact information, is consistent with the service bulletin. This number represents the time necessary to perform only the inspections actually required by this AD. We recognize that, in accomplishing the requirements of any AD, operators may incur additional costs due to special circumstances when scheduling maintenance visits. However, because maintenance schedules vary significantly from operator to operator, the hours necessary for access and closeup time, including removing and re-installing fasteners, are almost impossible to calculate. Therefore, no change is made to the final rule in this regard.

Requests To Change Compliance Time

One commenter asks that the compliance time specified in paragraph (a)(2) of the proposed AD be changed from ''For airplanes with 13,000 or more total flight cycles as of the effective date of this AD: Do the inspection within 1,000 flight cycles or 1 year after the effective date of this AD, whichever is first,'' to ''For airplanes with 13,000 or more flight cycles as of the effective date of this AD: Do the inspection within 1,000 flight cycles after the effective date of this AD.'' If a calendar-driven timetable is used, to prevent unnecessary special maintenance visits, the commenter asks that paragraph (a)(2) be changed to, ''For airplanes with 13,000 or more flight cycles as of the effective date of this AD: Do the inspection within 1,000 flight cycles or 18 months after the effective date of this AD, whichever occurs first.'' The commenter states that the subject cracking is caused by fatigue, and such cracking is attributed to cyclic loading, not calendar time, so requiring a fatigue-related inspection based on calendar time is not justified. The commenter adds that most 747 operators currently use C-check inspection intervals of 18 months. Due to this fact, the commenter

notes that the one-year initial inspection interval specified in paragraph (a)(2) would impose special inspection visits on one-third of the fleet.

A second commenter also asks that the compliance time specified in paragraph (a)(2) of the proposed AD be changed to ''For airplanes with 13,000 or more flight cycles as of the effective date of this AD: Do the inspection within 1,300 flight cycles or 18 months after the effective date of this AD, whichever occurs first.'' The commenter adds that this compliance time supports maintenance flow.

The same commenter asks that the compliance time in paragraph (a)(1) of the proposed AD be changed to ''For airplanes with less than 13,000 flight cycles as of the effective date of this AD: Do the inspection prior to the accumulation of 13,000 flight cycles or within 1,300 flight cycles after the effective date of this AD, whichever occurs later.'' The commenter adds that this compliance time results in inspections and rework during scheduled A-checks.

We do not agree with the commenters. We have determined that a 1,000 flight cycle grace period for airplanes having more than 13,000 total flight cycles may not provide for an adequate level of safety for airplanes with low cycle usage. While there is some technical merit that a calendar-based compliance time should not apply to a fatigue issue, we have determined that the 1-year compliance time will ensure that the required inspections are completed in a timely manner, in particular, on airplanes that are well above the 13,000 total flight cycle threshold.

In developing an appropriate compliance time for the actions required by this AD, we considered not only those safety issues, but the manufacturer's recommendations and the practical aspect of accomplishing the inspection within an interval paralleling normal scheduled maintenance for the majority of affected operators. In light of the factors described previously, we consider ''within 1,000 flight cycles or 1 year after the effective date of this AD, whichever occurs first,'' to be an appropriate compliance time wherein safety will not be adversely affected. No change to the final rule is necessary in this regard.

Additional Change to Final Rule

Because the language in Note 3 of the proposed AD is regulatory in nature, that note has been redesignated as paragraph (b) of this 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 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 1,129 airplanes of the affected design in the worldwide fleet. The FAA estimates that 275 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours 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 this required inspection on U.S. operators is estimated to be $49,500, or $180 per airplane, per inspection cycle.

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:

2003–10–06 Boeing: Amendment 39–13151. Docket 2000–NM–377–AD.

Applicability: Model 747 series airplanes, line numbers 1 through 1255 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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, which could lead to reduced structural integrity of the lower lobe cargo door cutout, and result in rapid depressurization of the airplane, accomplish the following:

Repetitive Inspections

(a) Perform detailed and high frequency eddy current (HFEC) inspections to find cracking of the skin, bear strap, and sill chord at the upper aft and forward corners of the lower lobe cargo door cutout, per Boeing Service Bulletin 747–53A2448, Revision 1, dated April 4, 2002. Do the initial inspections at the time shown in paragraph (a)(1) or (a)(2) of this AD, as applicable, and repeat the inspections at least every 3,000 flight cycles until paragraph (d) of this AD is accomplished.

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.''

(1) For airplanes with fewer than 13,000 total flight cycles as of the effective date of this AD: Do the inspection prior to the accumulation of 13,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes with 13,000 or more total flight cycles as of the effective date of this AD: Do the inspection within 1,000 flight cycles or 1 year after the effective date of this AD, whichever is first.

Credit for Inspections Accomplished Per Original Issue of Service Bulletin

(b) Inspections accomplished prior to the effective date of this AD per Boeing Alert Service Bulletin 747–53A2448, including Appendix A, dated September 28, 2000, are considered acceptable for compliance with the applicable inspection(s) specified in paragraph (a) of this AD.

Repair

(c) If any crack is found during any inspection required by paragraph (a) of this AD: Before the next flight, repair per Boeing Service Bulletin 747–53A2448, Revision 1, dated April 4, 2002, except as provided by paragraph (e) of this AD. Repairs and post-repair inspections done per Part 4 of the service bulletin end the repetitive inspections required by paragraph (a) of this AD for the repaired area only.

Optional Modification and Post-Modification Inspections

(d) If no crack is found during any inspection required by paragraph (a) of this AD, operators may accomplish paragraphs (d)(1) and (d)(2) of this AD.

(1) Do an optional modification of the lower lobe cargo door cutout (including removing the hinge fairing and its fasteners, oversizing fastener holes, and replacing existing fasteners with new fasteners and the grounding strap with a new strap) per Figure 4 or 7, as applicable, of Boeing Service Bulletin 747–53A2448, Revision 1, dated April 4, 2002, except as provided by paragraph (e) of this AD. Such modification ends the repetitive inspections required by paragraph (a) of this AD.

(2) At the applicable compliance time and repetitive inspection interval specified in Figure 1 of Boeing Service Bulletin 747–53A2448, Revision 1, dated April 4, 2002, perform detailed and HFEC inspections to find cracking of the skin at the upper aft and forward corners of the lower lobe cargo door cutout, per Figure 5 of the service bulletin. If any crack is found, before the next flight, repair per the service bulletin, except as provided by paragraph (e) of this AD.

Repair and Modification: Exception

(e) Where Boeing Service Bulletin 747–53A2448, Revision 1, dated April 4, 2002, specifies to contact Boeing for repair or modification information: Repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved as required by this paragraph, the approval must specifically refer to this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Incorporation by Reference

(h) Except as provided by paragraphs (b) and (e) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–53A2448, Revision 1, dated April 4, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on July 1, 2003.

Issued in Renton, Washington, on May 16, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12840 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–231–AD; Amendment 39–13154; AD 2003–10–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 and –400F series airplanes, that requires initial and, for certain airplanes, repetitive inspections of the rivets in the forward, top, and side panels of the nose wheel well (NWW) for discrepancies; and follow-on inspections and corrective action, if necessary. This amendment also provides eventual terminating action for the repetitive inspections. The actions specified by this AD are intended to find and fix discrepancies of the rivets in the NWW panels, which could result in failure of the rivets and consequent reduced structural integrity of the panels and rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 1, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 2003.

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: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6434; fax (425) 917–6535.

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 747–400 and –400F series

airplanes was published in the **Federal Register** on January 8, 2003 (68 FR 1017). That action proposed to require initial and, for certain airplanes, repetitive inspections of the rivets in the forward, top, and side panels of the nose wheel well (NWW) for discrepancies; and follow-on inspections and corrective action, if necessary. That action also proposed to provide eventual 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. One commenter states that it does not own or operate the equipment affected by the proposed AD, and has no comments.

Request To Give Credit for Terminating Action

One commenter asks that the compliance time specified in paragraph (c) of the proposed AD be changed from ''Within 2 years after the effective date of this AD'' to ''No later than 2 years after the date of this AD.'' The commenter states that this wording would give credit to operators that have previously performed the identical terminating action at a time prior to the eventual release of the final rule.

The FAA agrees that any operator that has previously performed the terminating action required by paragraph (c) of the final rule does not have to do that action again. We already give credit for actions accomplished before the effective date of an AD by means of the phrase ''Compliance: Required as indicated, unless accomplished previously,'' which appears in every AD. Therefore, no change to the final rule is necessary in this regard.

Explanation of Editorial Changes

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

We also have added a reference to the service bulletin in paragraphs (a)(1) and (c)(1) of this final rule for 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 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 43 airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per airplane to do the detailed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the detailed inspection required by this AD on U.S. operators is estimated to be $1,440, or $240 per airplane, per inspection cycle.

It will take approximately 10 work hours per airplane to do the indirect conductivity eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the indirect conductivity eddy current inspection required by this AD on U.S. operators is estimated to be $3,600, or $600 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:

2003–10–09 Boeing: Amendment 39–13154. Docket 2001–NM–231–AD.

Applicability: Model 747–400 and –400F series airplanes, line numbers 1141 through 1183 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 (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 find and fix discrepancies of the rivets in the nose wheel well (NWW) panels, which could result in failure of the rivets and consequent reduced structural integrity of the panels and rapid depressurization of the airplane, do the following:

Repetitive/Follow-on Inspections/Corrective Action

(a) Within 6 months after the effective date of this AD: Do a detailed inspection of the forward, top, and side panels of the NWW for missing rivet heads, between fuselage stations 260 and 340 of the canted pressure bulkhead, per Figure 2 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2472, including Appendix A, excluding Evaluation Form, dated June 7, 2001.

(1) If any missing rivet head is found, before further flight, replace with a permanent or time limited repair fastener per the Work Instructions of the service bulletin, and do the actions specified in paragraph (b) of this AD.

(2) If no missing rivet head is found, before further flight, do the actions required by paragraph (c) of this AD, or repeat the detailed inspection at least every 6 months until paragraph (c) of this AD is done.

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.''

(b) If any missing rivet head is found during any inspection required by paragraph (a) of this AD: Within 30 days after doing the detailed inspection, do an indirect conductivity eddy current inspection for discrepant rivets (incorrectly heat-treated) per Figure 2 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2472, including Appendix A, excluding Evaluation Form, dated June 7, 2001. If any discrepant rivet is found, before further flight, replace with a permanent or time limited repair fastener as required by paragraph (b)(1) or (b)(2) of this AD, as applicable. If no discrepant rivet is found, no further action is required by this AD. Replace any time limited repair fasteners with permanent fasteners within 24 months after installation.

(1) If up to three adjacent discrepant rivets are found: Before further flight, remove the affected rivets and replace with permanent or time limited repair fasteners per the Work Instructions of the service bulletin.

(2) If four or more adjacent discrepant rivets are found: Before further flight, remove the affected rivets and do a high frequency eddy current inspection of the web for cracking around the intact fasteners at each end of the line of missing rivets per the Work Instructions of the service bulletin.

(i) If no web cracking is found, before further flight, install permanent or time limited repair fasteners per the Work Instructions of the service bulletin.

(ii) If any web cracking is found, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Terminating Action

(c) For airplanes on which no missing rivet head is found during the inspection required by paragraph (a) of this AD: Within 2 years after the effective date of this AD, do an indirect conductivity eddy current inspection for discrepant rivets (incorrectly heat-treated) of the NWW panels between fuselage stations 260 and 340 of the canted pressure bulkhead per the Work Instructions of Boeing Alert Service Bulletin 747–53A2472, including Appendix A, excluding Evaluation Form, dated June 7, 2001.

(1) If any discrepant rivet is found, before further flight, replace with a permanent or time limited repair fastener per the Work Instructions of the service bulletin. Replace any time limited repair fasteners with permanent fasteners within 24 months after installation.

(2) If no discrepant rivet is found, no further action is required by 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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 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

(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) Unless otherwise provided in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2472, including Appendix A, excluding Evaluation Form, dated June 7, 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

(g) This amendment becomes effective on July 1, 2003.

Issued in Renton, Washington, on May 16, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12841 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–142–AD; Amendment 39–13157; AD 2003–10–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that requires, among other actions, modifying the down drive brackets of the left- and right-hand sides of the inboard flap track 1 assembly and installation of bigger bolts and washers, and testing the torque value of the nuts. The actions specified by this AD are intended to prevent failure of the bolts due to flexural loads caused by transmission jam loading, which could lead to a ''flap-locked'' condition, causing reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 1, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 2003.

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 A330 and A340 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on January 3, 2003 (68 FR 302). That action proposed to

require, among other actions, modifying the down drive brackets of the left- and right-hand inboard flap track 1 assembly, and testing the torque value of the nuts.

Comments

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

Conclusion

After careful review of the available data, 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 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13 work hours per airplane to accomplish the modifications and installations, 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 $7,020, or $780 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:

2003–10–12 Airbus: Amendment 39–13157. Docket 2001–NM–142–AD.

Applicability: The airplanes specified in Table 1 of this AD, certificated in any category. Table 1 is as follows:

TABLE 1.—APPLICABILITY

Model—	Which have received—	Excluding airplanes—
A330 series airplanes	Airbus Modification 45326 in production.	Modified in production per Airbus Modification 47619, or modified in service per Airbus Service Bulletin A330–57–3067, Revision 03, dated August 7, 2002.
A340 series airplanes	Airbus Modification 45326 in production.	Modified in production per Airbus Modification 47619, or modified in service per Airbus Service Bulletin A340–57–4075, Revision 02, dated August 7, 2002.

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 (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 failure of the bolts due to flexural loads caused by transmission jam loading, which could lead to a ''flap-locked'' condition, causing reduced controllability of the airplane, accomplish the following:

Modification and Testing

(a) At the times specified in Table 2 of this AD, modify the down drive brackets of the left- and right-hand inboard flap track 1 assembly and test the torque value of the nuts by accomplishing all actions specified in the Accomplishment Instructions of Airbus Service Bulletin A330–57–3067, Revision 03, dated August 7, 2002 (for Model A330 series airplanes); or Airbus Service Bulletin A340–57–4075, Revision 02, dated August 7, 2002 (for Model A340 series airplanes); as applicable. Table 2 is as follows:

TABLE 2.—COMPLIANCE TIME

Compliance time—	Action—	For model—	On which—
(1) Within 36 months since date of manufacture of the airplane, or within 6 months from the effective date of this AD, whichever occurs later.	(i) Modify	A330 series airplanes	Airbus Service Bulletin A330–57–3067, dated October 12, 2000; Revision 01, dated April 10, 2001; or Revision 02, dated February 2, 2002; has not been done.
	(ii) Modify	A340 series airplanes	Airbus Service Bulletin A340–57–4075, dated October 12, 2000; or Revision 01, dated April 10, 2001; has not been done.
(2) Within 700 flight hours from the effective date of this AD.	(i) Test	A330 series airplanes	Airbus Service Bulletin A330–57–3067, dated October 12, 2000; Revision 01, dated April 10, 2001; has been done using U.S. Customary Units.
	(ii) Test	A340 series airplanes	Airbus Service Bulletin A340–57–4075, dated October 12, 2000; or Revision 01, dated April 10, 2001; has been done using U.S. Customary Units.

Parts Installation

(b) As of the effective date of this AD, no person shall install, on any airplane, an inboard flap track 1 assembly unless it has been modified and its associated nuts have been torqued in accordance with this AD.

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, International Branch, ANM–116, FAA, Transport Airplane Directorate. 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 2: 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

(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 Airbus Service Bulletin A330–57–3067, Revision 03, dated August 7, 2002; or Airbus Service Bulletin A340–57–4075, Revision 02, dated August 7, 2002; 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 3: The subject of this AD is addressed in French airworthiness directives 2002–368(B) and 2002–369(B), both dated August 7, 2002.

Effective Date

(f) This amendment becomes effective on July 1, 2003.

Issued in Renton, Washington, on May 16, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12842 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–245–AD; Amendment 39–13153; AD 2003–10–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model 717–200 airplanes, that requires modification of the longeron-to-frame installation of the upper center fuselage. This action is necessary to prevent fatigue cracking of the longerons of the upper center fuselage, which could result in reduced structural integrity of the fuselage. This action is intended to address the identified unsafe condition.

DATES: Effective July 1, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 2003.

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: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; 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 717–200 airplanes was published in the **Federal Register** on February 24, 2003 (68 FR 8558). That action proposed to require modification of the longeron-to-frame installation of the upper center fuselage. This action is necessary to prevent fatigue cracking of the longerons of the upper center fuselage, which could result in reduced structural integrity of the fuselage.

Opportunity for Comment

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.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

There are approximately 56 airplanes of the affected design in the worldwide fleet. The FAA estimates that 38 airplanes of U.S. registry will be affected by this AD, that it will take approximately 108 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost is minimal for required parts. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $246,240, or $6,480.

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:

2003–10–08 McDonnell Douglas: Amendment 39–13153. Docket 2001–NM–245–AD.

Applicability: Model 717–200 airplanes, manufacturer's fuselage numbers 5001 through 5056 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 (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 fatigue cracking of the longerons of the upper center fuselage, which could result in reduced structural integrity of the fuselage, accomplish the following:

(a) Before the accumulation of 30,000 total flight cycles, or within 10 years after the effective date of this AD, whichever is first: Modify the longeron-to-frame installation of the upper center fuselage between stations Y=655.000 and Y=813.000, at longerons L–5L to L–5R (includes fabrication of the angles and installation of support angles and doublers), per Boeing Service Bulletin 717–53–0001, dated March 20, 2001, excluding Evaluation Form.

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 Boeing Service Bulletin 717–53–0001, dated March 20, 2001, excluding Evaluation Form. 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 July 1, 2003.

Issued in Renton, Washington, on May 16, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12839 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–309–AD; Amendment 39–13155; AD 2003–10–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model 717–200 airplanes, that requires modification of certain attachment holes in the rear spar of the left and right wings. This action is necessary to prevent fatigue cracking of the rear spar of the wings, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 1, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 2003.

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: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; 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 717–200 airplanes was published in the **Federal Register** on February 24, 2003 (68 FR 8564). That action proposed to require modification of certain attachment holes in the rear spar of the left and right wings.

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.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

There are approximately 57 airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 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 modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $955 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $48,945, or $1,255 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. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions.

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:

2003–10–10 McDonnell Douglas: Amendment 39–13155. Docket 2001–NM–309–AD.

Applicability: Model 717–200 airplanes, manufacturer's fuselage numbers 5002 through 5058 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 (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 fatigue cracking of the rear spar of the wings, which could result in reduced structural integrity of the airplane, accomplish the following:

Modification

(a) Before the accumulation of 30,000 total flight cycles or within 10 years after the effective date of this AD, whichever is first: Modify the attachment holes in the rear spar of the left and right wings (includes cold working 9 uncoined attachment holes and replacing 22 bolts with Hi-Lok fasteners), per Boeing Service Bulletin 717–57–0001, Revision 01, excluding Evaluation Form, dated January 6, 2003.

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 Boeing Service Bulletin 717–57–0001, Revision 01, excluding Evaluation Form, dated January 6, 2003. 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 July 1, 2003.

Issued in Renton, Washington, on May 16, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12838 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–335–AD; Amendment 39–13158; AD 2003–10–13]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Beech 400A and 400T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Beech 400A and 400T series airplanes, that requires replacement of the low-pressure oxygen tubing located in the forward fuselage (nose avionics bay), lower forward flight deck, and lower forward cabin areas, as applicable, with new low-pressure oxygen tubing. This action is necessary to prevent leakage of oxygen from scored low-pressure oxygen tubing, which could result in lack of available oxygen for the flightcrew, or possible explosion or fire. This action is intended to address the identified unsafe condition.

DATES: Effective July 1, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. 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, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Aerospace Engineer, Airframe and Services Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4129; fax (316) 946–4107.

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 Raytheon Model Beech 400A and 400T series airplanes was published in the **Federal Register** on February 24, 2003 (68 FR 8563). That action proposed to require replacement of the low-pressure oxygen tubing located in the forward fuselage (nose avionics bay), lower forward flight deck, and lower forward cabin areas, as applicable, with new low-pressure oxygen tubing.

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.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the notice of proposed rulemaking (NPRM) regarding that material.

Cost Impact

There are approximately 34 airplanes of the affected design in the worldwide fleet. The FAA estimates that 27 airplanes of U.S. registry will be affected by this AD, that it will take approximately 25 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,052 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $68,904, or $2,552 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:

2003–10–13 Raytheon Aircraft Company (Formerly Beech): Amendment 39–13158. Docket 2001–NM–335–AD.

Applicability: Model Beech 400A series airplanes, serial numbers RK–232 through RK–265 inclusive; and Model Beech 400T series airplane having serial number TX–10; 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 leakage of oxygen from scored low-pressure oxygen tubing, which could result in lack of available oxygen for the flightcrew, possible explosion, or fire, accomplish the following:

Replacement of Oxygen Tubing

(a) For Model 400A series airplanes: Within 200 flight hours or 1 year from the effective date of this AD, whichever occurs first, replace the low-pressure oxygen tubing located in the forward fuselage (nose avionics bay), lower forward flight deck, and lower forward cabin areas, as applicable, with new low-pressure oxygen tubing, per Part I of the Accomplishment Instructions specified in Raytheon Service Bulletin SB 35–3406, dated March 2001.

(b) For Model 400T series airplanes: Within 200 flight hours or 1 year from the effective date of this AD, whichever occurs first, replace the low-pressure oxygen tubing located in the forward fuselage (nose avionics bay), lower forward flight deck, and lower forward cabin areas, as applicable, with new low-pressure oxygen tubing, per Part II of the Accomplishment Instructions specified in Raytheon Service Bulletin SB 35–3406, dated March 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, Wichita 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, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita 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 Raytheon Service Bulletin SB 35–3406, dated March 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 Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; 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 July 1, 2003.

Issued in Renton, Washington, on May 16, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12843 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–10–AD; Amendment 39–13156; AD 2003–10–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767–200 and –300 series airplanes, that currently requires repetitive inspections to find discrepancies of the barrel nuts that attach the vertical fin to body section 48, and follow-on actions. For certain airplanes, the existing AD requires replacement of certain bolts with new bolts. The existing AD also provides for optional terminating actions for the repetitive inspections. This amendment reduces the compliance time for the inspections; changes the torque specification; and mandates eventual replacement of all H–11 steel alloy barrel nuts and bolts with Inconel nuts and bolts, which ends the repetitive inspections. The actions specified by this AD are intended to find and fix corroded, cracked, or

broken barrel nuts that attach the vertical fin to body section 48, which could result in reduced structural integrity of the vertical fin attachment joint, loss of the vertical fin, and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 1, 2003.

The incorporation by reference of Boeing Service Bulletin 767–53A0085, Revision 2, dated May 2, 2002; and Boeing Service Bulletin 767–53A0085, Revision 3, dated November 21, 2002; as listed in the regulations; is approved by the Director of the Federal Register as of July 1, 2003.

The incorporation by reference of Boeing Service Bulletin 767–53–0085, dated May 14, 1998; and Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999; as listed in the regulations; was approved previously by the Director of the Federal Register as of October 9, 2001 (66 FR 48538, September 21, 2001).

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: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–19–04, amendment 39–12444 (66 FR 48538, September 21, 2001), which is applicable to certain Boeing Model 767–200 and –300 series airplanes, was published in the **Federal Register** on August 16, 2002 (67 FR 53529). The action proposed to continue to require repetitive inspections to find discrepancies of the barrel nuts that attach the vertical fin to body section 48, and follow-on actions. For certain airplanes, the action proposed to continue to require replacement of certain bolts with new bolts. The action also proposed to continue to provide for optional terminating actions for the repetitive inspections. The new action proposed to reduce the compliance time for the inspections; change the torque specification; and mandate eventual replacement of all H–11 steel alloy barrel nuts and bolts with Inconel nuts and bolts, which would end 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.

Request To Reference Revision 3 of the Service Bulletin

One commenter, the manufacturer, states that it is in the process of issuing Boeing Service Bulletin 767–53A0085, Revision 3 (Boeing Service Bulletin 767–53A0085, Revision 2, dated May 2, 2002, was referenced in the proposed AD as the source of service information for accomplishment of certain actions). The commenter would like the FAA to review Revision 3 and add it to the proposed AD. The commenter states that the changes in Revision 3 will correct the compliance statement specified in Revision 2 to align it with the proposed AD, and will also update the tooling information specified in Revision 2.

The FAA has reviewed and approved Boeing Service Bulletin 767–53A0085, Revision 3, dated November 21, 2002. We find that the changes incorporated in Revision 3 of the service bulletin are not substantive, meaning that airplanes modified per Boeing Service Bulletin 767–53–0085, dated May 14, 1998; Revision 1, dated July 1, 1999; or Revision 2, dated May 2, 2002; are not subject to any additional work under Revision 3 of the service bulletin. Revision 3 specifies a minor change to the compliance time recommended in Revision 2, but we have already extended the compliance time in this final rule, in order to avoid undue hardship on operators, per a comment we received (see discussion below). We have added Revision 3 of the service bulletin to this final rule as another source of service information for the accomplishment of certain actions.

Request To Add Credit Note for Terminating Action

Several commenters ask that a credit note be added for previous accomplishment of the replacements required by paragraph (e) of the proposed AD per Boeing Service Bulletin 767–53–0085, dated May 14, 1998; or Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999. One commenter would like credit to be given regardless of the revision level of the service bulletin, or any other approved maintenance procedures used to do the replacements, including the use of the production drawing. One commenter asks that credit be given for the replacements (terminating action) required by paragraph (e) of the proposed AD that were done before the required inspections and before the effective date of the AD.

We partially agree with the commenters' requests, as follows.

We agree that there are no significant changes among Boeing Service Bulletin 767–53–0085, dated May 14, 1998; Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999; and Boeing Service Bulletin 767–53A0085, Revision 2, dated May 2, 2002; for the bolt and barrel nut installation method. Therefore, we have added the original issue and Revision 1 of the service bulletin as additional sources of service information for accomplishment of the terminating action required by paragraph (f) of this final rule (paragraph (e) of the proposed AD). In addition, credit is given as allowed by the phrase, ''unless accomplished previously,'' and if the terminating action has already been accomplished per any of the service bulletin revisions specified in the final rule, this AD does not require that it be repeated.

We do not agree to give credit regardless of the revision level of the service bulletin, or any approved procedures including the production drawing because they are not FAA-approved. To use the phrase, ''or later FAA-approved revisions,'' in an AD when referring to the service document, violates Office of the Federal Register (OFR) regulations regarding approval of materials ''incorporated by reference'' in rules. In general terms, these OFR regulations require that either the service document contents be published as part of the actual AD language; or the service document be submitted for approval by the OFR as ''referenced'' material, in which case it may be only referred to in the text of an AD. The AD may refer only to the service document that was submitted and approved by the OFR for ''incorporation by reference.'' In order for operators to use later revisions of the referenced document (issued after the publication of the AD), either the AD must be revised to reference the specific later revisions, or operators must request the approval of the use of them as an alternative method of compliance with this AD under the provisions of paragraph (h)(1) of this final rule.

Requests To Change Paragraph (d)

Two commenters ask that paragraph (d) of the proposed AD be changed to specify that the new inspections are not required at the fastener locations where the H–11 steel bolts and nuts have been replaced with Inconel bolts and nuts.

We agree with the commenters. We have changed paragraph (d) of this final rule, for clarification, to specify inspection of only the locations having ''H–11 steel alloy bolts and nuts.''

Two commenters ask that paragraph (d) of the proposed AD be changed for clarification. One commenter states that paragraph (d) specifies doing internal and external inspections and a torque check within 18 months after doing the initial inspections required by paragraph (a) of the existing AD, or within 90 days after the effective date of the AD. The commenter notes that it already performed the inspections required by paragraph (a) on two of its airplanes per Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999, and adds that the repeat inspections were done in the first half of 2002. The commenter asks that paragraph (d) be changed to specify, ''Within 18 months after the doing initial or the last repeated inspections required by paragraphs (a) and (b) * * *.'' Another commenter asks that ''until paragraph (e) of this AD is done,'' be added at the end of the compliance time specified in paragraph (d) of the proposed AD.

We agree with the commenters to some extent. We have extended the compliance time specified in paragraph (d) of this final rule, per another comment (discussed below), to specify, ''Within 36 months after the last inspections done per paragraphs (a) and (b) of this AD * * *.'' However, paragraph (d) of this final rule already specifies that the inspections are repeated until accomplishment of paragraph (f) of the AD, so no change is necessary in this regard.

Request To Change Compliance Time

One commenter asks that the compliance time specified in paragraph (d) of the proposed AD be changed to, ''Within 36 months after the initial inspections required by paragraph (a) of this AD or by June 2003, whichever is later.'' The commenter states that the current compliance wording in paragraph (d) would result in inspecting its 28 airplanes within 90 days, which would require taking those airplanes out-of-service to do the inspections. The commenter adds that the inspections could be done on an overnight visit, but any findings would require replacement of the barrel nut/bolt. The commenter notes that replacement at a field station is not practical due to the tooling involved and the need to ensure the safety of personnel, as there have been reports of injuries while removing/replacing barrel nuts using tooling other than a torque multiplier.

We partially agree with the commenter. We do not agree to use a calendar date in the AD because the compliance time in this case is a function of fleet utilization, which is unrelated to calendar dates. However, we do agree to change the compliance time required by paragraph (d) of the final rule somewhat to avoid undue hardship on operators. Increasing the compliance time to, ''Within 36 months after the last inspections done per paragraphs (a) and (b) of this AD, or within 180 days after the effective date of this AD, whichever is later,'' will provide an acceptable level of safety. Paragraph (d) of this final rule has been changed accordingly.

Another commenter asks that the compliance time specified in paragraph (d) of the proposed AD be changed to ''Within 18 months after the last inspection done per maintenance planning document (MPD) Items 5380–311–02I and 5380–312–02I. The commenter states that paragraph (d) should clearly identify airplanes that would require the 90-day compliance time, and adds that, under the new requirements, it appears that the airplanes on which the MPD inspections specified in paragraph (a) of the proposed AD were done would require that the inspections specified in paragraph (d) be done within 90 days.

We do not agree with the commenter. We have determined that the MPD inspections were inadequate and did not detect corroded barrel nuts and bolts. Operators have reported finding cracked bolts that passed the 2,000-inch pound torque check specified in MPD Items 5380–311–02I and 5380–312–02I. The MPD inspections are inadequate because they do not include a visual inspection of the barrel nut holes for sealant damage or signs of corrosion. Therefore, the compliance time cannot be changed to include inspections done per the MPD; however, the compliance time in paragraph (d) of this final rule has been changed somewhat for clarification, per another comment discussed previously.

Request To Change Cost Impact Section

One commenter asks that the Cost Impact section of the proposed AD be changed. The commenter states that the hours required to do the actions, as specified in the referenced service bulletin, should be changed to show a more accurate cost impact. The commenter also states that the hours required for inspections and torque checks, and for the replacement of the 16 vertical stabilizer attachment nuts and bolts, as listed in the referenced service bulletin, are not sufficient. The commenter adds that an experienced crew with adequate tooling would require 24 work hours to do the replacement, and estimates the total work hours for replacement to be approximately 72 work hours. The commenter also adds that the rental cost of tooling would be $12,051 per day. The commenter states that the proposed AD should be changed to reflect the significant cost of the tooling required to do the replacement.

We do not agree with the commenter. The cost impact information describes only the costs of the specific actions required by this AD. The number of work hours necessary to accomplish the actions, specified in the cost impact information, was provided by the manufacturer based on the best data available to date. This number 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. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as tooling costs, 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. No change to the final rule is necessary in this regard.

Additional Changes to Final Rule

We have removed the reference to replacement of ''all 16'' H–11 steel bolts specified in paragraph (f) of this final rule (paragraph (e) of the proposed AD), as some of the replacements may have been made before the effective date of this final rule. Paragraph (f) now specifies replacement of ''all'' H–11 steel bolts.

There is a typographical error in the reference to the Maintenance Planning Document (MPD) Item numbers specified in paragraphs (a)(1) and (a)(2) of AD 2001–19–04 and restated in the proposed AD. MPD Items 5380–311–021 and 5380–312–021, as specified in both paragraphs, should be referenced as MPD Items 5380–311–02I and 5380–312–02I. Paragraphs (a)(1) and (a)(2) of this final rule have been changed accordingly.

Paragraph (g)(2) of the proposed AD (paragraph (h)(2) of this final rule) should have included a reference to paragraphs (a) and (b) in the approval of previously granted alternative methods of compliance with AD 2001–19–04, amendment 39–12444. Paragraph (h)(2) of this final rule has been changed accordingly.

Because the language in Note 3 of the proposed AD is regulatory in nature, that note has been redesignated as paragraph (e) of this final rule, and subsequent paragraphs have been reordered 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 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 549 airplanes of the affected design in the worldwide fleet. The FAA estimates that 221 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 2001–19–04 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 currently required actions is estimated to be $120 per airplane.

The inspections that are required in this AD action 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 inspections on U.S. operators is estimated to be $13,260, or $60 per airplane.

The replacement that is required in this AD action takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $6,528 per airplane. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $1,548,768, or $7,008 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 39–12444 (66 FR 48538, September 21, 2001), and by adding a new airworthiness directive (AD), amendment 39–13156, to read as follows:

2003–10–11 Boeing: Amendment 39–13156. Docket 2002–NM–10–AD. Supersedes AD 2001–19–04, Amendment 39–12444.

Applicability: Model 767–200 and –300 series airplanes, line numbers 1 through 574 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 (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix corroded, cracked, or broken barrel nuts that attach the vertical fin to body section 48, which could result in reduced structural integrity of the vertical fin attachment joint, loss of the vertical fin, and consequent loss of controllability of the airplane; accomplish the following:

Restatement of Requirements of AD 2001–19–04

Internal/External Detailed Inspections

(a) Do internal and external detailed inspections of the barrel nuts at the 16 locations that attach the vertical fin to body section 48 to find discrepancies (*i.e.*, cracked or damaged sealant, signs of corrosion damage, cracked or broken barrel nuts). Do the inspections at the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable; per Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 767–53–0085, dated May 14, 1998; Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999; or Boeing Service Bulletin 767–53A0085, Revision 2, dated May 2, 2002.

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.''

(1) For airplanes on which the inspections specified in paragraph (a) of this AD have been done within the last 3 years per Boeing 767 Maintenance Planning Document (MPD) D622T001, Items 5380–311–02I and 5380–312–02I: Do the inspections at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Within 3 years or 6,000 flight cycles after doing the most recent inspection per the MPD, whichever comes first.

(ii) Within 45 days after October 9, 2001 (the effective date AD 2001–19–04, amendment 39–12444).

(2) For airplanes on which the inspections specified in paragraph (a) of this AD have not been done within the last 3 years per Boeing 767 MPD D622T001, Items 5380–311–02I and 5380–312–02I: Do the inspections within 45 days after October 9, 2001.

Follow-On Actions

(b) If no discrepancy is found during any inspection specified in paragraph (a) of this AD: Before further flight, do a torque check of each of the 16 bolts in the barrel nuts that attach the vertical fin to body section 48 to determine if any bolt turns, per Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 767–53–0085, dated May 14, 1998; Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999; or Boeing Service Bulletin 767–53A0085, Revision 2, dated May 2, 2002.

(1) If no bolt turns: Repeat the inspections required by paragraph (a) of this AD (and applicable follow-on actions) every 3 years or 6,000 flight cycles, whichever comes first; until paragraphs (d) and (e) of this AD are done.

(2) If any bolt turns: Before further flight, do the actions specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this AD, as applicable. Then repeat the inspections required by paragraph (a) of this AD (and applicable follow-on actions) every 3 years or 6,000 flight cycles, whichever comes first; until paragraphs (d) and (e) of this AD are done.

(i) For all airplanes: Replace the barrel nut at that bolt with a new, Inconel barrel nut per Part 3 of the Accomplishment Instructions of the service bulletin. No further action is required for that barrel nut only.

(ii) For Group 1 airplanes: If an H–11 steel alloy bolt is installed with the affected barrel nut, replace the bolt with a new, Inconel bolt per Figure 5 of the Accomplishment Instructions of the service bulletin. No further action is required for that bolt only.

(c) If any discrepancy of any barrel nut is found during any inspection specified in paragraph (a) or (d) of this AD: Before further flight, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD, as applicable.

(1) For all airplanes: Replace the affected barrel nut with a new, Inconel barrel nut per Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 767–53–0085, dated May 14, 1998; Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999; or Boeing Service Bulletin 767–53A0085, Revision 2, dated May 2, 2002. No further action is required for that barrel nut only.

(2) For Group 1 airplanes: If an H–11 steel alloy bolt is installed with the affected barrel nut, replace the bolt with a new, Inconel bolt per Figure 5 of the Accomplishment Instructions of the service bulletin. No further action is required for that bolt only.

New Requirements of This AD

Detailed Inspection/Torque Check

(d) Within 36 months after the last inspections done per paragraphs (a) and (b) of this AD, or within 180 days after the effective date of this AD, whichever is later: Do internal and external detailed inspections and a torque check (between 3,700 and 4,100 inch-pounds of torque) of the 16 locations that attach the vertical fin to body section 48, and that have H–11 steel alloy barrel nuts or bolts, to find discrepancies (*i.e.*, cracked or damaged sealant, signs of corrosion damage, and cracked or broken barrel nuts), per Boeing Service Bulletin 767–53A0085, Revision 2, dated May 2, 2002; or Revision 3, dated November 21, 2002. Repeat the inspections and check after that at least every 18 months until paragraph (f) of this AD is done.

Credit for Actions Done Previously

(e) Accomplishment of inspections and torque checks before the effective date of this AD per Boeing Service Bulletin 767–53–0085, dated May 14, 1998; or Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999; is considered acceptable for compliance with the applicable actions specified in paragraphs (a) and (b) of this AD only.

Terminating Action

(f) Within 36 months after the effective date of this AD: Replace all H–11 steel alloy barrel nuts and bolts that attach the vertical fin to body section 48 with Inconel barrel nuts and bolts, per Boeing Service Bulletin 767–53–0085, dated May 14, 1998; Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999; Boeing Service Bulletin 767–53A0085, Revision 2, dated May 2, 2002; or Revision 3, dated November 21, 2002. Such replacement ends the repetitive inspections required by this AD.

Part Installation

(g) As of the effective date of this AD: No person shall install, on any airplane, an Inconel vertical fin attach bolt, unless an Inconel barrel nut is installed at the same location; nor shall any person install an H–11 steel alloy attachment nut or bolt on the vertical fin on any airplane.

Alternative Methods of Compliance

(h)(1) 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.

(2) Alternative methods of compliance, approved previously in accordance with AD 2001–19–04, amendment 39–12444, are approved as alternative methods of compliance with paragraphs (a) and (b) of this AD.

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

(i) 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

(j) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 767–53–0085, dated May 14, 1998; Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999; Boeing Service Bulletin 767–53A0085, Revision 2, dated May 2, 2002; or Boeing Service Bulletin 767–53A0085, Revision 3, dated November 21, 2002; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 767–53A0085, Revision 2, dated May 2, 2002; and Boeing Service Bulletin 767–53A0085, Revision 3, dated November 21, 2002; 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 Boeing Service Bulletin 767–53–0085, dated May 14, 1998; and Boeing Alert Service Bulletin 767–53A0085, Revision 1, dated July 1, 1999; was approved previously by the Director of the Federal Register as of October 9, 2001 (66 FR 48538, September 21, 2001).

(3) 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

(k) This amendment becomes effective on July 1, 2003.

Issued in Renton, Washington, on May 16, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12844 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–10980; Airspace Docket No. 01–AWP–21]

RIN 2120–AA66

Revision of Jet Route 10

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Jet Route 10 (J–10) between the Farmington, NM, Very High Frequency Omnidirectional Radio Range and Tactical Air Navigation Aids (VORTAC), and the HIPPI intersection. The current J–10 route is aligned from Farmington, NM, via the Drake, AZ, VORTAC, to the HIPPI intersection. This action realigns J–10 from Farmington, NM, to the Flagstaff VORTAC, to the HIPPI intersection. This change is part of the FAA's National Airspace Redesign effort and is intended to improve the management of aircraft operations in Arizona.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

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

SUPPLEMENTARY INFORMATION:

History

On February 26, 2002, the FAA published in the **Federal Register** a notice proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 71 to revise J–10, between Farmington, NM, VORTAC, and the HIPPI intersection (67 FR 8743). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

The Rule

This action amends 14 CFR part 71 to revise J–10 between the Farmington, NM, VORTAC, and the HIPPI intersection. The current J–10 route is aligned from Farmington, NM, via the Drake, AZ, VORTAC, to the HIPPI intersection. This action realigns J–10 from Farmington, NM, to the Flagstaff VORTAC, to the HIPPI intersection. This change is part of the FAA's National Airspace Redesign effort and is intended to improve the management of aircraft operations in Arizona.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document would be published subsequently in the order.

Environmental Review

In accordance with FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act of 1969, this action is not categorically excluded.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 2004—Jet Routes

J–10 [Revised]

From Los Angeles, CA; via INT Los Angeles 083° and Twentynine Palms, CA, 269° radials; Twentynine Palms; INT of Twentynine Palms 075°and Flagstaff 251°, radials; Flagstaff, AZ; Farmington, NM, Blue Mesa, CO; Falcon, CO; North Platte, NE; Wolbach, NE; Des Moines, IA; to Iowa City, IA.

* * * * *

Issued in Washington, DC, on May 15, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–13153 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AC53

NASA Grant and Cooperative Agreement Handbook—Incremental Funding

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the NASA Grant and Cooperative Agreement Handbook by revising the conditions and restrictions for use of incremental funding. The revisions in this area are necessary to increase flexibility while retaining appropriate controls over the number and size of incremental funding actions. The final rule also removes duplicative reference to property standards from the Buy American Encouragement provision; updates the grant and cooperative agreement identification numbering scheme used by NASA; and corrects a summary list of provisions. These changes will ensure the appropriate use of incremental funding of grants, eliminate an unnecessary cross-reference within a provision, and make other internal administrative and technical changes.

EFFECTIVE DATE: May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Rita Svarcas, NASA Headquarters, Code HC, Washington, DC, (202) 358–0464, e-mail: *RSvarcas@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

This change amends and clarifies the circumstances under which grants and cooperative agreements can be incrementally funded. A previous change in this area was intended to minimize the number of incremental funding actions issued under NASA grants and cooperative agreements in order to increase internal efficiency and decrease the associated workload for grantees. However, the unintended consequences of the change were that the NASA Centers were constrained from awarding and funding lower-dollar-value instruments, especially during the latter part of the Government Fiscal Year and during continuing resolution periods. This regulation has been identified, through a ''Freedom to Manage'' suggestion, as a barrier that gets in the way of NASA's efficiency and effectiveness. This final rule is intended to correct the situation by allowing the NASA Centers to incrementally fund grants and cooperative agreements more often, including those with a lower dollar value and those that require funding during continuing resolution periods. This final rule retains an adequate level of control over such actions by setting dollar thresholds and establishing local waiver authority for potential exceptions. Additionally, NASA is in the process of implementing a new Agency-wide Integrated Financial Management System. This implementation requires a minor change

to the number of digits and sequence of characters used in the grant and cooperative agreement identification number. Lastly, when the provision at 1260.39, Buy American Encouragement, was added in July 2002, it unnecessarily included a duplicative reference to property standards; and it incorrectly changed the listing of provisions to be included in research grants, education grants, and cooperative agreements with U.S. educational institutions and non-profit organizations in section 1260.20, Provisions. This final rule makes the necessary internal administrative changes for incremental funding and grant numbering; removes a duplicative reference in a provision; and corrects the list of applicable provisions.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the changes primarily modify existing internal operational practices.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.*

List of Subjects in 14 CFR Part 1260

Grant Programs—Science and Technology.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 14 CFR part 1260 is amended as follows:

■ 1. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*), and OMB Circular A–110.

PART 1260—GRANTS AND COOPERATIVE AGREEMENT

■ 2. Amend section 1260.11 by revising paragraph (h) to read as follows:

§ 1260.11 Evaluation and selection.

* * * * *

(h) NASA reserves the right to either fully fund or incrementally fund grants based on fiscal law and program considerations. Incremental funding of grants and cooperative agreements shall conform to the following procedure:

(1) When the period of performance for a grant crosses Government Fiscal Years, the grant will usually be incrementally funded, using appropriations from different Government Fiscal Years. In other circumstances, incremental funding may be appropriate. The special condition at § 1260.53, Incremental Funding, will be included in any grant that is incrementally funded. The grant officer will determine the number of incremental funding actions that will be allowed.

(2) Specific limitations on incremental funding are as follows:

(i) Grants that are funded using appropriations from different Government Fiscal Years should provide funding from the prior fiscal year that carries at least one month into the subsequent fiscal year in order to facilitate transition of the grant to the subsequent fiscal year's funding cycle.

(ii) Only those grants whose anticipated funding exceeds $100,000 of appropriations from a single Government Fiscal Year may be incrementally funded within that fiscal year's appropriations.

(iii) Incremental funding actions to obligate or deobligate funds shall not total less than $25,000 unless the action is necessary to comply with the requirement to use appropriations from different Government Fiscal Years, to fully fund a grant, to close out a grant, or to make a corrective accounting adjustment.

(3) On an exception basis, and with the concurrence of the installation Chief Financial Officer (CFO) or Deputy CFO for Resources, the procurement officer may waive the restrictions set forth in paragraphs (h)(2)(i) through (h)(2)(iii) of this section for individual funding actions on individual grants. The procurement officer shall maintain a record of all such approvals during the fiscal year.

(4) The restrictions set forth in paragraphs (h)(2)(i) through (h)(2)(iii) of this section are not applicable during the period of a continuing resolution. During such a period, NASA will nonetheless endeavor to fund individual grants using reasonably sized increments.

* * * * *

§ 1260.15 [Amended]

■ 3. Section 1260.15 is amended as follows:

■ a. In the introductory text of paragraph (c), remove the words ''prior to Integrated Financial Management Project (IFMP) implementation'';

■ b. In paragraph (c)(1), remove ''NAG5'' and add ''NAG5-'' in its place; and

■ c. Remove paragraph (d).

■ 4. Amend Section 1260.20 by revising paragraph (a); and in the first sentence of paragraph (d) remove ''1260.39'' and add ''1260.38'' in its place.

■ Revised paragraph (a) reads as follows:

§ 1260.20 Provisions.

(a) Research grants, education grants, training grants, and cooperative agreements with U.S. educational institutions and nonprofit organizations shall incorporate by reference the provisions set forth in §§ 1260.21 through 1260.39. For training grants, the grant officer shall substitute § 1260.22, Technical Publications and Reports, with reporting requirements as specified by the program office.

* * * * *

§ 1260.39 [Amended]

■ 5. Amend section 1260.39 by revising the date of the provision to read ''May 2003''; removing the paragraph designation paragraph ''(a)''; and removing paragraph (b).

[FR Doc. 03–13161 Filed 5–23–03; 8:45 am]

BILLING CODE 7510–01–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revision of Tennessee Valley Authority Freedom of Information Act Regulations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of Information Act (FOIA) regulations to reflect a change in the procedure for obtaining paper copies of documents located in TVA's electronic reading room.

EFFECTIVE DATE: May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Denise Smith, FOIA Officer, Tennessee Valley Authority, 400 W. Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902–1499, telephone number (865) 632–6945.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to agency procedure and practice. Since this rule is nonsubstantive, it is being made effective May 27, 2003.

List of Subjects in 18 CFR Part 1301

Freedom of Information, Government in the Sunshine, Privacy.

■ For the reasons stated in the preamble, TVA amends 18 CFR part 1301 as follows:

PART 1301—PROCEDURES

■ 1. The authority citation for part 1301, subpart A, continues to read as follows:

Authority: 16 U.S.C. 831–831ee, 5 U.S.C. 552.

■ 2. Revise § 1301.2 to read as follows:

§ 1301.2 Public reading rooms.

TVA maintains a public electronic reading room through its Web site at *http://www.tva.gov.* This electronic reading room contains the records that the FOIA requires to be made regularly available for public inspection and copying. Paper copies of documents accessible through TVA's reading room are available upon request from the TVA Research Library at 400 W. Summit Hill Drive, Knoxville, Tennessee 37902–1499, and 1101 Market Street, Chattanooga, Tennessee 37402–2801. Each TVA organization is responsible for determining which of the records it generates are required to be made available in this way and for ensuring that those records are available in TVA's reading room. TVA's FOIA Officer will maintain a current subject-matter index of TVA's reading room records.The index is identified as the Reading Room Table of Contents on TVA's Web site and will be updated regularly, at least quarterly, with respect to newly included records.

Tracy S. Williams,

Vice President, External Communications, Tennessee Valley Authority.

[FR Doc. 03–13093 Filed 5–23–03; 8:45 am]

BILLING CODE 8120–08–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 435

RIN 0960–AE25

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final rules establish new regulations providing standards in the administration of SSA grants and agreements with institutions of higher education, hospitals, other non-profit organizations, and commercial organizations.

The Social Security Independence and Program Improvements Act of 1994, enacted August 15, 1994, established SSA as an independent agency separate from the Department of Health and Human Services (HHS), effective March 31, 1995. To implement its own set of grants administration regulations, we are codifying almost verbatim the text of the Office of Management and Budget (OMB) Circular Number A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations.''

These final rules codify in SSA regulations the requirements in OMB Circular A–110, and along with the final rules we are publishing elsewhere in today's **Federal Register,** establish SSA grants regulations, separate from the HHS regulations, effective upon publication.

EFFECTIVE DATE: These final rules are effective on May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Phyllis Y. Smith, Chief Grants Management Officer, Office of Operations Contracts and Grants, Office of Acquisition and Grants, SSA, 1710 Gwynn Oak Ave., Baltimore, MD 21207–5279; telephone (410) 965–9518; fax (410) 966–9310.

SUPPLEMENTARY INFORMATION:

I. Background

OMB Circular A–110 (Circular) provides standards for obtaining consistency and uniformity among Federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations. The Circular was originally issued in 1976 and, except for a minor revision in 1987, it remained unchanged until it was revised by OMB in 1993 (58 FR 62992). It was subsequently amended in 1997 (62 FR 45934) and 1999 (64 FR 54926).

In 1987, OMB convened an interagency task force to update the Circular. The work of the task force resulted in the publication of a 1988 notice in the **Federal Register** (53 FR 44716) proposing that the Circular be merged with OMB Circular A–102, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' as a consolidated ''common rule.'' The public response led to a decision by OMB to not finalize the proposal.

In November 1990, another interagency task force was established to revise the Circular and develop a set of common principles for the administration of grants and agreements with institutions of higher education, hospitals and other non-profit organizations. The task force solicited suggestions for changes to the Circular from university groups, non-profit organizations and other interested parties and compared, for consistency, the provisions of similar provisions applied to State and local governments. As a result, in August 1992, OMB published a notice in the **Federal Register** (57 FR 39018) requesting comments on proposed revisions to the Circular. OMB received over 200 comments from Federal agencies, non-profit organizations, professional organizations and others. OMB considered all comments in developing the final revision to the Circular. The Circular issued in 1993 reflects the results of these efforts. The revised Circular was developed in a model rule format to facilitate regulatory adoption by affected Federal agencies. OMB's notice directed each affected agency to promulgate its own rules adopting the language as it appears in the Circular unless different provisions are required by Federal statute or are approved by OMB (58 FR 62992–93). The notice states that OMB will review agency regulations and implementation of the Circular and will provide interpretations of policy requirements and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB and will only be made in particular cases where adequate justification is presented.

Except as provided therein, the standards set forth in the Circular are applicable to all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided in the Circular, the provisions of the statute shall govern. Federal agencies must apply the provisions of the Circular in making awards to the covered entities. Recipients must apply the provisions of the Circular to subrecipients performing substantive work under grants and agreements that are passed through or awarded by the primary recipient, if such subrecipients are organizations that are covered entities. The Circular does not apply to grants, contracts, or other agreements between the Federal government and units of State or local governments covered by OMB Circular A–102, ''Grants and Cooperative Agreements with State and Local Governments,'' nor does it apply to the Federal agencies' grants management common rule that standardized and codified the administrative

requirements Federal agencies impose on State and local grantees. In addition, the Circular does not cover subawards and contracts to State or local governments. However, the Circular applies to subawards made by State and local governments to organizations covered by the Circular. Federal agencies may apply the provisions of the Circular to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations.

HHS applies the provisions of Circular A–110 in making awards to institutions of higher education, hospitals, other non-profit organizations, and commercial organizations through its regulations at 45 CFR part 74. Prior to March 31, 1995, SSA was an operating component of HHS. As a result of Public Law 103–296, SSA became an independent agency on March 31, 1995. However, pursuant to section 106(b) of that law, the HHS regulations at 45 CFR part 74 have remained applicable to SSA. As part of our effort to establish our own set of grant regulations, we are adopting almost verbatim the text of Circular A–110. The result is the SSA grants administration regulations at 20 CFR part 435. HHS regulations at 45 CFR part 74 will cease to be applicable to SSA on the effective date of these regulations, in accordance with section 106(b) of Public Law 103–296.

Consistent with the guidance provided in Circular A–110, this regulation applies to SSA awards made to institutions of higher education, hospitals, other non-profit organizations, and commercial organizations. Subpart E (Disputes) of this regulation applies to all SSA grant and cooperative agreement awards, including awards to the governmental organizations covered by the final rules we are publishing elsewhere in today's **Federal Register** that create a new part 437 in our regulations. When appropriate, this rule will also apply to foreign governments, organizations under the jurisdiction of foreign governments, and international organizations.

As noted above, OMB directed each affected agency to promulgate its own rules adopting the provisions of the Circular. Any exceptions or deviations, unless required by Federal statute, require OMB approval. Therefore, in support of OMB's desired uniformity, this rule incorporates the provisions and language of revised Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' published by OMB on November 29, 1993 (58 FR 62992), as further amended August 29, 1997 (62 FR 45934), and October 8, 1999 (64 FR 54926).

On April 27, 2000, we published a notice of proposed rulemaking (NPRM) proposing establishment of a new part 435 in the Code of Federal Regulations (65 FR 24768) that would mirror the requirements of OMB Circular A–110 and be separate from the HHS regulations. The NPRM described proposed differences between part 435 and Circular A–110 and between part 435 and the HHS regulations at 45 CFR part 74. The April 27, 2000, NPRM allowed a sixty-day period for public comments. We received no public comments. We are, therefore, adopting the proposed rules as final rules with the nonsubstantive changes noted below.

II. Differences Between Part 435 (Final Rule) and the NPRM

A. In § 435.1, we have added a sentence to reflect that the SSA appeal process for disputes arising under SSA awards that is described in subpart E of these rules applies to all SSA grants and cooperative agreements, including awards to the State, local and Indian tribal governments covered by the new part 437 rules (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) we are publishing elsewhere in today's **Federal Register.**

B. In § 435.5, we have modified the last sentence to reflect that State and local subrecipients are subject to the new part 437 rules.

Regulatory Procedures

Waiver of 30-Day Delay in Effective Date

Section 702(a)(5) of the Social Security Act (Act) makes the regulations we prescribe subject to the rulemaking procedures established under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. Section 553(d) of the APA requires that the effective date of a substantive rule be no less than 30 days after its publication, except in cases of: Rules which grant or recognize an exemption or relieve a restriction; interpretative rules and statements of policy; or as otherwise provided by the agency for good cause found and published with the rule.

Under 5 U.S.C. 553(d)(3), good cause exists for dispensing with the minimum 30-day period between publication date and effective date. As indicated above, these regulations adopt without change the substantive provisions of the OMB Circular A–110. Pursuant to section 106(b) of Public Law 103–296, the HHS regulations at 45 CFR part 74, which implement the provisions of OMB Circular A–110, remain applicable to SSA until such time as these regulations become effective. A 30-day delay in the effective date of these regulations would serve no purpose since, during such delay, the identical provisions of part 74, which implement the provisions of OMB Circular A–110, would remain applicable. Accordingly, these regulations are effective on publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and have determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they merely reflect the adoption of existing grant policies and procedures by SSA and do not promulgate any new policies or procedures which would impact the public. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 provided that no one is required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that the Office of Management and Budget has approved the information collection requirements contained in 20 CFR part 435 in §§ 435.12, 435.22 and 435.52 of these final rules. The OMB Control Numbers for these collections are 0348–0039 (SF–269), 0348–0038 (SF–269A), 0348–0043 (SF–424), 0348–0004 (SF–270), 0348–0002 (SF–271) and 0348–00030 (SF–272).

(Catalog of Federal Domestic Assistance: Program No. 96.007 Social Security—Research and Demonstration; and Program No. 96.008—Social Security Administration—Benefits Planning, Assistance, and Outreach Program.)

List of Subjects in 20 CFR Part 435

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs—health,

Grant programs—social programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: April 25, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are adding a new part 435 to chapter III of title 20 of the Code of Federal Regulations to read as follows:

PART 435—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NON-PROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS

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Authority: 5 U.S.C. 301.

Subpart A—General

§ 435.1 Purpose.

This part establishes the Social Security Administration (SSA) administrative requirements for grants and agreements awarded to institutions of higher education, hospitals, other non-profit organizations, and commercial organizations. Subpart E of this part, which sets forth the SSA appeal process for disputes arising under SSA awards, applies to all SSA grants and cooperative agreements, including awards to the State, local and Indian tribal governments covered by 20 CFR part 437. SSA will not impose additional or inconsistent requirements, except as provided in §§ 435.4 and 435.14. Non-profit organizations that implement Federal programs for the States are also subject to State requirements. For availability of OMB circulars, see 5 CFR 1310.3.

§ 435.2 Definitions.

Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of:

(1) Earnings during a given period from:

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, must be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which SSA determines that all applicable administrative actions and all required work of the award have been completed by the recipient and SSA.

Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching means that portion of project or program costs not borne by the Federal government.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which SSA sponsorship ends.

Disallowed costs means those charges to an award that the Federal awarding

agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property means property under the control of SSA that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where SSA has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Intangible property and debt instruments means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

Obligations means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or expenditures mean charges made to the project or program. They may be reported on a cash or accrual basis.

(1) *Cash basis.* For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients.

(2) *Accrual basis.* For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval means written approval by an authorized SSA official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (*see* exclusions in § 435.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in SSA regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which Federal sponsorship begins and ends.

Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means an organization receiving financial assistance directly from SSA to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of SSA. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. ''Research'' is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Small awards means a grant or cooperative agreement not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

SSA means the Federal agency that provides an award to the recipient.

Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include

procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in this section.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

Suspension means an action by SSA that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by SSA. Suspension of an award is a separate action from suspension under Federal agency regulations implementing Executive Orders 12549 and 12689, ''Debarment and Suspension.''

Termination means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Third party in-kind contributions mean the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by SSA that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount that could have been awarded under the recipient's approved negotiated indirect cost rate.

Working capital advance means a procedure in which funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 435.3 Effect on other issuances.

For awards subject to this part, the requirements of this part apply, rather than the administrative requirements of other codified program regulations, program manuals, handbooks and other nonregulatory materials, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 435.4.

§ 435.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part will be permitted only in unusual circumstances. SSA may apply more restrictive requirements to a class of recipients when approved by OMB. SSA may apply less restrictive requirements when awarding small awards, except for those requirements that are statutory. SSA may also make exceptions on a case-by-case basis.

§ 435.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part will be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, other non-profit, or commercial organizations. State and local government subrecipients are subject to the provisions of 20 CFR Part 437, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

Subpart B—Pre-Award Requirements

§ 435.10 Purpose.

Sections 435.11 through 435.17 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 435.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, SSA will decide on the appropriate award instrument (*i.e.*, grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts.

(1) *Grants and cooperative agreements.* A grant or cooperative agreement will be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.''

(2) *Contracts.* Contracts will be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* SSA will notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 435.12 Forms for applying for Federal assistance.

(a) SSA must comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by SSA in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants must use the SF–424 series or those forms and instructions prescribed by SSA.

(c) For Federal programs covered by Executive Order 12372, ''Intergovernmental Review of Federal Programs'' (3 CFR, 1982 Comp., p. 197), the applicant must complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from *SSA* or the *Catalog of Federal Domestic Assistance.* The SPOC will advise the applicant whether the program for which application is made has been selected by that State for review.

§ 435.13 Debarment and suspension. [Reserved]

§ 435.14 Special award conditions.

(a) *When special conditions may apply.* SSA may impose additional requirements, as needed, if an applicant or recipient:

(1) Has a history of poor performance,

(2) Is not financially stable,

(3) Has a management system that does not meet the standards prescribed in this part,

(4) Has not conformed to the terms and conditions of a previous award, or

(5) Is not otherwise responsible.

(b) *Notice of special conditions.* When imposing additional requirements, SSA will notify the recipient in writing as to:

(1) The nature of the additional requirements,

(2) The reason why the additional requirements are being imposed,

(3) The nature of the corrective action needed,

(4) The time allowed for completing the corrective actions, and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) Any special conditions will be promptly removed once the conditions that prompted them have been corrected.

§ 435.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates, in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. SSA follows the provisions of Executive Order 12770, ''Metric Usage in Federal Government Programs'' (3 CFR, 1991 Comp., p. 343).

§ 435.16 Resource Conservation and Recovery Act.

Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002 of the Resource Conservation and Recovery Act (Public Law 94–580; 42 U.S.C. 6962). Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247 through 254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds must give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 435.17 Certifications and representations.

Unless prohibited by statute or codified regulation, SSA will allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations must be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

Financial and Program Management

§ 435.20 Purpose of financial and program management.

Sections 435.21 through 435.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 435.21 Standards for financial management systems.

(a) *Introduction.* SSA requires recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) *Basic requirements.* Recipients' financial management systems must provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 435.52. If SSA requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient will not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients must adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Public Law 101–453; 31 U.S.C. 6501) govern, payment methods of State agencies, instrumentalities, and fiscal agents must be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) *Bonding and insurance requirements.* Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, SSA, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) *Fidelity bond coverage requirements.* SSA may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) *Obtaining bonds.* Where bonds are required in the situations described in paragraphs (c) and (d) of this section, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

§ 435.22 Payment.

(a) *Introduction.* Payment methods must minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State

agencies or instrumentalities must be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) *Advance payment method and requirements.* (1) Recipients will be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(ii) Financial management systems that meet the standards for fund control and accountability as established in § 435.21.

(2) Cash advances to a recipient organization will be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances must be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) *Advance payment consolidation and mechanisms.* Whenever possible, advances must be consolidated to cover anticipated cash needs for all awards made by SSA to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients are authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) *How to request advance payment.* Requests for Treasury check advance payment must be submitted on SF–270, ''Request for Advance or Reimbursement,'' or other forms that may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special SSA instructions for electronic funds transfer.

(e) *Reimbursement method.* Reimbursement is the preferred method when the advance payment requirements in paragraph (b) of this section cannot be met. SSA may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, SSA will make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients will be authorized to submit a request for reimbursement at least monthly when electronic funds transfers are not used.

(f) *Working capital advance method.* If a recipient cannot meet the criteria for advance payments and SSA has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, SSA may provide cash on a working capital advance basis. Under this procedure, SSA will advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, SSA will reimburse the recipient for its actual cash disbursements. The working capital advance method of payment will not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) *Requesting additional cash payments.* To the extent available, recipients must disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) *Withholding of payments.* Unless otherwise required by statute, SSA will not withhold payments for proper charges made by recipients at any time during the project period unless paragraph (h)(1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.'' Under such conditions, SSA may, upon reasonable notice, inform the recipient that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) *Standards governing the use of banks and other institutions as depositories of funds advanced under awards.* (1) Except for situations described in paragraph (i)(2) of this section, SSA will not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds must be deposited and maintained in insured accounts whenever possible.

(j) *Use of women-owned and minority-owned banks.* Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients will be encouraged to use women-owned and minority-owned banks (a bank that is owned at least 50 percent by women or minority group members).

(k) *Use of interest bearing accounts.* Recipients must maintain advances of Federal funds in interest bearing accounts, unless paragraph (k)(1), (2) or (3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) *Remittance of interest earned.* For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts must be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals must comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from SSA, it waives its right to recover the interest under CMIA.

(m) *Forms for requesting advances and reimbursements.* Except as noted elsewhere in this part, only the following forms are authorized for the recipients in requesting advances and reimbursements. SSA will not require more than an original and two copies of these forms.

(1) *SF–270, Request for Advance or Reimbursement.* SSA has adopted the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. SSA, however, has the option of using this form for construction programs in lieu of the SF–271, ''Outlay

Report and Request for Reimbursement for Construction Programs.''

(2) *SF–271, Outlay Report and Request for Reimbursement for Construction Programs.* SSA has adopted the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, SSA may substitute the SF–270 when SSA determines that it provides adequate information to meet Federal needs.

§ 435.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, will be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by SSA.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of SSA.

(c) Values for recipient contributions of services and property will be established in accordance with the applicable cost principles. If SSA authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching will be the lesser of paragraph (c)(1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, SSA may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services must be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services must be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share must be reasonable and may not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g)(1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that SSA has approved the charges.

(h) The value of donated property must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

(1) The value of donated land and buildings may not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (*e.g.*, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment may not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space may not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment may not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land must be documented.

§ 435.24 Program income.

(a) *Introduction.* SSA will apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) *Use of program income.* Except as provided in paragraph (h) of this section, program income earned during the project period must be retained by the recipient and, in accordance with SSA regulations or the terms and conditions of the award, must be used in one or more of the following ways. Program income must be:

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) *Use of excess program income.* When an agency authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated must be used in accordance with paragraph (b)(3) of this section.

(d) *When the use of program income is not specified.* In the event that SSA does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section will apply automatically to all projects or programs except research. For awards that support

research, paragraph (b)(1) of this section will apply automatically unless SSA indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 435.14.

(e) *Program income earned after end of project period.* Unless SSA regulations or the terms and conditions of the award provide otherwise, recipients will have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) *Costs incident to generation of program income.* If authorized by SSA regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) *Proceeds from sale of property.* Proceeds from the sale of property must be handled in accordance with the requirements of the Property Standards (See §§ 435.30 through 435.37).

(h) *Program income from license fees and royalties.* Unless SSA regulations or the terms and condition of the award provide otherwise, recipients have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 435.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon SSA requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients must request prior approvals from SSA for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by SSA.

(6) The inclusion, unless waived by SSA, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Educational Institutions,'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' or 45 CFR part 74 Appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, SSA may waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of SSA. All pre-award costs are incurred at the recipient's risk (*i.e.*, SSA is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify SSA in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless SSA provides otherwise in the award or in the SSA regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (*i.e.*, recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) SSA may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by SSA. No transfers are permitted that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients must request prior written approval promptly from SSA for budget revisions whenever paragraph (h)(1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 435.27.

(i) No other prior approval requirements for specific items will be imposed unless a deviation has been approved by OMB.

(j) When SSA makes an award that provides support for both construction and nonconstruction work, SSA may require the recipient to request prior approval before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, recipients must notify SSA in writing promptly whenever the amount of Federal

authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification is not required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients must use the budget forms that were used in the application unless SSA indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, SSA will review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, SSA will inform the recipient in writing of the date when the recipient may expect the decision.

§ 435.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) are subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) State and local governments are subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 are subject to the audit requirements of SSA.

(d) Commercial organizations are subject to the audit requirements of SSA or the prime recipient as incorporated into the award document.

§ 435.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs will be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus:

(a) Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments.''

(b) Allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.''

(c) Allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.''

(d) Allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.''

(e) Allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 435.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by SSA.

Property Standards

§ 435.30 Purpose of property standards.

Sections 435.31 through 435.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Recipients must observe these standards under awards and SSA may not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 435.31 through 435.37.

§ 435.31 Insurance coverage.

Recipients must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 435.32 Real property.

SSA will prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, will contain the following.

(a) *Title.* Title to real property will vest in the recipient subject to the condition that the recipient will use the real property for the authorized purpose of the project as long as it is needed and will not encumber the property without approval of SSA.

(b) *Use in other projects.* The recipient must obtain written approval by SSA for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects is limited to those under federally-sponsored projects (*i.e.*, awards) or programs that have purposes consistent with those authorized for support by SSA.

(c) *Disposition.* When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient must request disposition instructions from SSA or its successor Federal awarding agency. SSA will observe one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by SSA and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures will be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient will be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 435.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients must submit annually an inventory listing of federally-owned property in their custody to SSA. Upon completion of the award or when the property is no longer needed, the recipient must report the property to SSA for further Federal agency utilization.

(2) If SSA has no further need for the property, it will be declared excess and reported to the General Services Administration, unless SSA has statutory authority to dispose of the property by alternative methods (*e.g.*, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12821, ''Improving Mathematics and Science Education in Support of the National Education Goals'' (3 CFR, 1992 Comp., p. 323). Appropriate instructions will be issued to the recipient by SSA.

(b) *Exempt property.* When statutory authority exists, SSA has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions SSA considers appropriate. Such property is ''exempt property.'' Should SSA not establish conditions, title to exempt property upon acquisition will vest in the recipient without further obligation to the Federal Government.

§ 435.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds will vest in the recipient, subject to conditions of this section.

(b) The recipient may not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient may use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and may not encumber the property without approval of SSA. When no longer needed for the original project or program, the recipient must use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by SSA, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient must make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use must be given to other projects or programs sponsored by SSA; second preference must be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government will be permissible if authorized by SSA. User charges will be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of SSA.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment must include all of the following:

(1) Equipment records must be maintained accurately and must include the following information:

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government must be identified to indicate Federal ownership.

(3) A physical inventory of equipment must be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the causes of the difference. The recipient must, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment must be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient must promptly notify SSA.

(5) Adequate maintenance procedures must be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures must be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to SSA or its successor. The amount of compensation will be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient must request disposition instructions from SSA. SSA will determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment will be reported to the General Services Administration by SSA to determine whether a requirement for the equipment exists in other Federal agencies. SSA will issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures will govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient must sell the equipment and reimburse SSA an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient is permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient will be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, SSA will reimburse the recipient for such costs incurred in its disposition.

(4) SSA may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such a transfer will be subject to the following standards:

(i) The equipment must be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) SSA must issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory must list all equipment acquired with grant funds and federally-owned equipment. If SSA fails to issue disposition instructions within the 120 calendar day period, the recipient must apply the standards of this section, as appropriate.

(iii) When SSA exercises its right to take title, the equipment will be subject to the provisions for federally-owned equipment.

§ 435.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property will vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient may retain the supplies for use on non-Federal sponsored activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation will be computed in the same manner as for equipment.

(b) The recipient may not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 435.36 Intangible property.

(a) *Copyright.* The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. SSA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) *Patents and inventions.* Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) *Rights of Federal Government.* The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) *FOIA requests for research data.* (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, SSA shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If SSA obtains the research data solely in response to a FOIA request, SSA may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by SSA, the recipient, and applicable subrecipients. This fee is in addition to any fees SSA may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This ''recorded'' material excludes physical objects (*e.g.*, laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) P*ublished* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) *Title to intangible property and debt instruments.* Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient must use that property for the originally-authorized purpose, and the recipient may not encumber the property without approval of SSA. When no longer needed for the originally authorized purpose, disposition of the intangible property will occur in accordance with the provisions of § 435.34(g).

§ 435.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds must be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 435.40 Purpose of procurement standards.

Sections 435.41 through 435.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. SSA may impose no additional procurement standards or requirements upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 435.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to SSA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 435.42 Codes of conduct.

The recipient must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated in this section, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 435.43 Competition.

All procurement transactions must be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient must be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals must be excluded from competing for such procurements. Awards must be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations must clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 435.44 Procurement procedures.

(a) All recipients must establish written procurement procedures. These procedures must provide, at a minimum, that paragraphs (a)(1), (2), and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description may not contain features, which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts must be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards must take all of the following steps to further this goal:

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (*e.g.*, fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) may be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting may not be used.

(d) Contracts may be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration must be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of Executive Orders 12549 and 12689, ''Debarment and Suspension'' (3 CFR, 1986 Comp., p. 189 and 3 CFR, 1989 Comp., p. 235).

(e) Recipients must, on request, make available for SSA, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently $100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ''brand name'' product.

(4) The proposed award over the simplified acquisition threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the simplified acquisition threshold.

§ 435.45 Cost and price analysis.

Some form of cost or price analysis must be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 435.46 Procurement records.

Procurement records and files for purchases in excess of the simplified acquisition threshold must include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

§ 435.47 Contract administration.

A system for contract administration must be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients must evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 435.48 Contract provisions.

The recipient must include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions must also be applied to subcontracts:

(a) Contracts in excess of the simplified acquisition threshold must contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the simplified acquisition threshold must contain suitable provisions for termination by the recipient, including the manner by which termination will be effected and the basis for settlement. In addition, such contracts must describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements must provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, SSA may accept the bonding policy and requirements of the recipient, provided SSA has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements are as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described in this section, the bonds must be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by recipients must include a provision to the effect that the recipient, SSA, the Comptroller General of the United States, or any of their duly authorized representatives, will have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors must contain the procurement provisions of Appendix A to this part, as applicable.

Reports and Records

§ 435.50 Purpose of reports and records.

Sections 435.51 through 435.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 435.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients must monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 435.26.

(b) SSA will prescribe the frequency with which the performance reports must be submitted. Except as provided in paragraph (f) of this section, performance reports will not be required more frequently than quarterly or, less frequently than annually. Annual reports are due 90 calendar days after the grant year; quarterly or semi-annual reports are due 30 days after the reporting period. SSA may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report will not be required after completion of the project.

(d) When required, performance reports must generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients will not be required to submit more than the original and two copies of performance reports.

(f) Recipients must immediately notify SSA of developments that have a significant impact on the award-supported activities. Also, notification must be given in the case of problems, delays, or adverse conditions, which materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) SSA may make site visits, as needed.

(h) SSA will comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 435.52 Financial reporting.

(a) *Authorized forms.* The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients:

(1) *SF–269 or SF–269A, Financial Status Report.* (i) SSA requires recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. However, SSA has the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A will be required at the completion of the project when the SF–270 is used only for advances.

(ii) SSA may prescribe whether the report will be on a cash or accrual basis. If SSA requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient will not be required to convert its accounting system, but must develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) SSA will determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report will not be required more frequently than quarterly or less frequently than annually. A final report is required at the completion of the agreement.

(iv) SSA will require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by SSA upon request of the recipient.

(2) *SF–272, Report of Federal Cash Transactions.* (i) When funds are advanced to recipients, SSA will require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. SSA will use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) SSA may require forecasts of Federal cash requirements in the ''Remarks'' section of the report.

(iii) When practical and deemed necessary, SSA may require recipients to report in the ''Remarks'' section the amount of cash advances received in excess of three days. Recipients must provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients are required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. SSA may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) SSA may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in SSA's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When SSA needs additional information or more frequent reports, the following will be observed:

(1) When additional information is needed to comply with legislative requirements, SSA will issue instructions to require recipients to submit such information under the ''Remarks'' section of the reports.

(2) When SSA determines that a recipient's accounting system does not meet the standards in § 435.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. SSA, in obtaining this information, will comply with report clearance requirements of 5 CFR part 1320.

(3) SSA may shade out any line item on any report if not necessary.

(4) SSA may accept the identical information from the recipients in machine-readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) SSA may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 435.53 Retention and access requirements for records.

(a) *Purpose.* This section sets forth the requirements for record retention and access to records for awards to recipients. SSA may not impose any other record retention or access requirements upon recipients.

(b) *Retention periods.* Financial records, supporting documents, statistical records, and all other records pertinent to an award must be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by SSA. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by SSA, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) *Use of copies.* Copies of original records may be substituted for the original records if authorized by SSA.

(d) *Records with long term retention value.* SSA will request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, SSA may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) *Federal access to records.* SSA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such

documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but will last as long as records are retained.

(f) *Public access to records.* Unless required by statute, SSA may not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when SSA can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to SSA.

(g) *Retention of indirect cost rate proposals, cost allocations plans, etc.* Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to SSA or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to SSA or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 435.60 Purpose of termination and enforcement.

Sections 435.61 and 435.62 set forth uniform suspension, termination and enforcement procedures.

§ 435.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraphs (a)(1) through (a)(3) of this section apply.

(1) By SSA, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By SSA with the consent of the recipient, in which case the two parties will agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to SSA written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if SSA determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraph (a)(1) or (a)(2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 435.71(a), including those for property management as applicable, will be considered in the termination of the award, and provision will be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 435.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, SSA may, in addition to imposing any of the special conditions outlined in § 435.14, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by SSA.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, SSA must provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless SSA expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination that are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (2) of this section apply.

(1) The costs result from obligations that were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under Executive Orders 12549 and 12689.

Subpart D—After-the-Award Requirements

§ 435.70 Purpose.

Sections 435.71 through 435.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 435.71 Closeout procedures.

(a) Recipients must submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. SSA may approve extensions when requested by the recipient.

(b) Unless SSA authorizes an extension, a recipient must liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) SSA will make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient must promptly refund any balances of unobligated cash that SSA has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, SSA will make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 435.31 through 435.37.

(g) In the event a final audit has not been performed prior to the closeout of

an award, SSA will retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 435.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of SSA to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 435.26.

(4) Property management requirements in §§ 435.31 through 435.37.

(5) Records retention as required in § 435.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of SSA and the recipient, provided the responsibilities of the recipient referred to in § 435.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 435.73 Collection of amounts due.

(a) *Methods of collection.* Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, SSA may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the recipient; or

(3) Taking other action permitted by statute.

(b) *Charging of interest.* Except as otherwise provided by law, SSA will charge interest on an overdue debt in accordance with 4 CFR Chapter II, ''Federal Claims Collection Standards.''

Subpart E—Disputes

§ 435.80 Appeal process.

(a) *Levels of appeal.* Grantee institutions (grantees) may appeal certain post-award adverse grant administration decisions made by SSA officials in the administration of discretionary grant programs. SSA has two levels of appeal:

(1) Initial appeal to the Associate Commissioner for the Office of Acquisition and Grants (ACOAG) from an adverse decision rendered by the Grant Management Officer (GMO); and

(2) Final appeal to the Commissioner of Social Security from an adverse decision rendered by the ACOAG.

(b) *Decisions that may be appealed.* The following types of adverse post-award written decisions by the GMO may be appealed:

(1) A disallowance or other determination denying payment of an amount claimed under an award. This does not apply to determinations of award amount or disposition of unobligated balances, or selection in the award document of an option for disposition of program-related income.

(2) A termination of an award for failure of the grantee to comply with any law, regulation, assurance, term, or condition applicable to the award.

(3) A denial of a noncompeting continuation award under the project period system of funding where the denial is for failure to comply with the terms and conditions of a previous award.

(4) A voiding of an award on the basis that it was fraudulently obtained or because the award was not authorized by statute or regulation.

(c) *Notice of adverse decision and requirements of grantee response.* The Grants Management Officer's (GMO) adverse post-award written decision should include the following statement:

This is the final decision of the Grants Management Officer. It will become the final decision of the Social Security Administration unless you submit a request for review of this decision to the Associate Commissioner for the Office of Acquisition and Grants, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207–5279. Your request for review must be in writing, include a copy of this decision, and fully state why you disagree with it. The request for review must be received by the ACOAG no later than 30 calendar days after the date of this decision.

§ 435.81 Initial appeal.

(a) *Timeliness of appeal to ACOAG.* A grantee may appeal an adverse decision rendered by the GMO by submitting to the ACOAG a written request for review of the adverse decision. The written request for review must be received by the ACOAG no later than 30 calendar days after the date of the GMO's adverse decision. Any request for review that is received after the thirtieth day will be dismissed as untimely.

(b) *Content of appeal to ACOAG.* The written request for review should fully explain why the grantee disagrees with the GMO's decision, state the pertinent facts and law relied upon, and provide any relevant documentation in support of the grantee's position.

(c) *Decision of ACOAG.* The ACOAG, or the ACOAG's delegate, will issue a written decision within 30 calendar days of the date of receipt of the written request for review. If the written decision is adverse to the grantee, the decision will include the following statement:

This is the final decision of the Office of Acquisition and Grants. It will become the final decision of the Social Security Administration unless you submit a request for review of this decision to the Commissioner of Social Security, Social Security Administration, Baltimore, Maryland 21235–0001. Your request for review must be in writing, include a copy of this decision, and fully state why you disagree with it. The request for review must be received by the Commissioner no later than 15 calendar days after the date of this decision. You should also send a copy of the request for review to the ACOAG.

§ 435.82 Appeal of decision of ACOAG.

(a) *Timeliness of appeal to Commissioner.* A grantee may appeal an adverse decision rendered by the ACOAG by submitting to the Commissioner of Social Security a written request for review of the ACOAG's decision. The written request for review must be received by the Commissioner no later than 15 calendar days after the date of the ACOAG's adverse decision. Any request for review that is filed after the fifteenth day will be dismissed as untimely. The grantee should also send a copy of the request for review to the ACOAG.

(b) *Content of appeal to Commissioner.* The written request for review should fully explain why the grantee disagrees with the ACOAG's decision, state the pertinent facts and law relied upon, and provide any relevant documentation in support of the grantee's position. A copy of the ACOAG's decision should also be appended to the request for review.

(c) *Decision of Commissioner.* The Commissioner, or the Commissioner's delegate, will issue a written decision on the request for review. Generally, the decision will be issued within 90 calendar days of the date of receipt of the request for review. If a decision is not issued within 90 days, the Commissioner, or the Commissioner's delegate, will inform the grantee in writing when a decision can be expected.

(d) *Final decision of SSA.* The decision of the Commissioner, or of the Commissioner's delegate, shall be the final decision of the Social Security Administration on the matter(s) in dispute.

Appendix A to Part 435

Contract Provisions

All contracts, awarded by a recipient including small purchases, must contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts must contain a provision requiring compliance with E.O. 11246, ''Equal Employment Opportunity,'' as amended by E.O. 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients must include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient will be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient must report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week. The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract will be conditioned upon the acceptance of the wage determination. The recipient must report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $100,000 for construction contracts and for other contracts that involve the employment of mechanics or laborers must include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of more than $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (Executive Orders 12549 and 12689)*—No contract will be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the simplified acquisition threshold must provide the required certification regarding its exclusion status and that of its principal employees.

[FR Doc. 03–11851 Filed 5–23–03; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 437

RIN 0960–AE28

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final rules establish new regulations dealing with the administrative requirements for grants and cooperative agreements with State and local governments. The Social Security Independence and Program Improvements Act of 1994 established SSA as an independent agency separate from the Department of Health and Human Services (HHS), effective March 31, 1995. As part of our effort to implement our own set of grants regulations, we are codifying the text of the governmentwide grants management Common Rule, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.'' This final rule, along with the final rules we are publishing elsewhere in today's **Federal Register**, establish SSA grants regulations, separate from those of HHS, effective upon publication.

EFFECTIVE DATE: These final rules are effective May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Phyllis Y. Smith, Chief Grants Management Officer, Office of Operations Contracts and Grants, Office of Acquisition and Grants, SSA, 1710 Gwynn Oak Ave., Baltimore, MD 21207–5279; telephone (410) 965–9518; FAX (410) 966–9310.

SUPPLEMENTARY INFORMATION:

I. Background

In 1983, a 20-agency task force established under the President's Council on Management Improvement explored streamlining grants management and reviewed OMB Circular A–102, ''Uniform Administrative Requirements for Grants to State and Local Governments.'' As an outgrowth of the task force studies, a governmentwide ''common'' rule was

drafted, which contained fiscal and administrative requirements for grants and cooperative agreements to State and local governments (grantees) and subrecipients which are State and local governments (subgrantees). At the same time, OMB and the agencies drafted a revised Circular A–102 containing guidance to Federal agencies on how they should manage the award and administration of Federal grants.

Consequently, two governmentwide documents were issued. On March 11, 1988, a revised OMB Circular A–102—directed solely to Federal agencies—was published in the **Federal Register** (53 FR 8028). On the same date, a common rule was published (53 FR 8033). Consistent with a March 12, 1987, Presidential memorandum, affected agencies adopted the grants management Common Rule verbatim, except where inconsistent with statutory requirements. The circular became effective immediately while the Common Rule did not become effective until October 1, 1988.

The grants management Common Rule sets forth consistent and uniform standards among Federal agencies in the management of grants and cooperative agreements with State, local, and federally recognized Indian tribal governments. HHS implements the provisions of the grants management Common Rule through its regulations at 45 CFR part 92. Prior to March 31, 1995, SSA was an operating component of HHS. As a result of Public Law 103–296, SSA became an independent agency on March 31, 1995. However, pursuant to section 106(b) of that law, the HHS regulations at 45 CFR part 92 remain applicable to SSA. In order to implement our own set of grants regulations, we are essentially adopting the text of the governmentwide grants management Common Rule. The result is the SSA grants administration regulations, 20 CFR part 437. HHS regulations at 45 CFR part 92 will cease to be applicable to SSA on the effective date of these regulations, in accordance with section 106(b) of Pub. L. 103–296.

II. Differences Between Part 437 and Common Rule

We have made several minor editorial corrections to the language in the common rule.

1. In § 437.20(a), in the first sentence, we have replaced the word ''expand'' with the word ''expend.'' The sentence correctly reads: ''A State must *expend* and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds.''

2. In § 437.30(f)(1), we have replaced the word ''formal'' with the word ''format.'' The sentence correctly reads: ''A request for prior approval of any budget revision will be in the same budget *format* the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.''

3. In § 437.42(f), we have included a period after the word ''records'' so that a new sentence begins with the word ''unless.'' The sentences correctly read: ''The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records. Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.''

In addition to these changes, throughout new part 437, we have replaced, where appropriate, references to ''awarding agency(ies)'' to SSA. We have also made numerous nonsubstantive changes to make these rules easier for the public to read and understand.

III. Differences Between Part 437 and 45 CFR Part 92

We have also modified our rules from the HHS rules at part 92 in two ways:

1. We have not included the language at §§ 92.4(a)(2)–(10) and 92.4(b) in our regulations. These provisions, which list block grants and entitlements that are non-SSA programs, do not apply to SSA.

2. We have modified the language in § 92.30(a)(1), which appears in our regulations at § 437.30(a)(1), to show that approvals regarding revision of budget and program plans should be signed by the responsible SSA Grants Management Officer; or the SSA Commissioner or subordinate official with proper delegated authority from the Commissioner. SSA regional offices are not involved with grant administration activities. Therefore, language dealing with the delegation of approval authority to the regional offices is unnecessary.

Regulatory Procedures

Justification for Final Rule

This rule is being published as a final instead of as a proposed rule. Section 702(a)(5) of the Social Security Act (Act) makes the regulations we prescribe subject to the rulemaking procedures established under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. These procedures generally require publication of notice of the proposed rulemaking and the solicitation of comments from interested persons. However, the APA provides exceptions to notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

After due consideration, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking because such procedure would be unnecessary. These final regulations adopt as SSA regulations the provisions of the governmentwide grants management Common Rule without substantive change. Pursuant to section 106(b) of Public Law 103–296, the HHS regulations at 45 CFR part 92, which implement the provisions of the grants management Common Rule, remain applicable to SSA until such time as these regulations become effective. The differences in these regulations over those of the grants management Common Rule or those of 45 CFR part 92 are not substantive. Accordingly, promulgation of these regulations pursuant to notice and comment rulemaking is unnecessary and may be dispensed with pursuant to 5 U.S.C. 553(b)(B).

Waiver of 30-Day Delay in Effective Date

These regulations are effective on publication, rather than effective 30 days after publication. As indicated above, section 702(a)(5) of the Act makes the regulations we prescribe subject to the rulemaking procedures established under section 553 of the APA. Section 553(d) of the APA requires that the effective date of a substantive rule be no less than 30 days after its publication, except in cases of: rules which grant or recognize an exemption or relieve a restriction; interpretative rules and statements of policy; or as otherwise provided by the agency for good cause found and published with the rule.

Under 5 U.S.C. 553(d)(3), good cause exists for dispensing with the minimum 30-day period between publication date and effective date. As indicated above, these regulations adopt without change the substantive provisions of the governmentwide grants management Common Rule. A 30-day delay in the effective date of these regulations would serve no purpose since, during such delay, the identical provisions of Part 92, which implement the provisions of the grants management Common Rule, would remain applicable. Accordingly, these regulations are effective on publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and have determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because this rule merely reflects the adoption of existing grant policies and procedures by SSA and does not promulgate any new policies or procedures which would impact the public. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that the Office of Management and Budget has approved the information collection requirements contained in §§ 437.10 and 437.41 of these final rules. The OMB Control Numbers for these collections are 0348–0039 (SF–269), 0348–0038 (SF–269A), 0348–0043 (SF–424), 0348–0004 (SF–270), 0348–0002 (SF–271) and 0348–00030 (SF–272).

(Catalog of Federal Domestic Assistance: Program No. 96.007—Social Security—Research and Demonstration; and Program No. 96.008—Social Security Administration—Benefits Planning, Assistance, and Outreach Program)

List of Subjects in 20 CFR Part 437

Accounting, Administrative practice and procedures, Grant programs—health, Grant programs—social programs, Grants administration, Reporting and recordkeeping requirements.

Dated: April 25, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are adding a new part 437 to chapter III of title 20 of the Code of Federal Regulations to read as follows:

■ 1. Part 437 is added to read as follows:

PART 437—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
437.1 Purpose and scope of this part.
437.2 Scope of subpart.
437.3 Definitions.
437.4 Applicability.
437.5 Effect on other issuances.
437.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

437.10 Forms for applying for grants.
437.11 State plans.
437.12 Special grant or subgrant conditions for ''high-risk'' grantees.

Subpart C—Post-Award Requirements

Financial Administration

437.20 Standards for financial management systems.
437.21 Payment.
437.22 Allowable costs.
437.23 Period of availability of funds.
437.24 Matching or cost sharing.
437.25 Program income.
437.26 Non-Federal audit.

Changes, Property, and Subawards

437.30 Changes.
437.31 Real property.
437.32 Equipment.
437.33 Supplies.
437.34 Copyrights.
437.35 Subawards to debarred and suspended parties.
437.36 Procurement.
437.37 Subgrants.

Reports, Records, Retention, and Enforcement

437.40 Monitoring and reporting program performance.
437.41 Financial reporting.
437.42 Retention and access requirements for records.
437.43 Enforcement.
437.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

437.50 Closeout.
437.51 Later disallowances and adjustments.
437.52 Collection of amounts due.

Subpart E—Entitlement [Reserved]

Authority: 5 U.S.C. 301.

Subpart A—General

§ 437.1 Purpose and scope of this part.

This part establishes the Social Security Administration's administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments. The provisions of 20 CFR part 435, Subpart E (Disputes), also apply to grants and cooperative agreements covered by this part 437.

§ 437.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 437.3 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of:

(1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition Cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from programmatic requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means:

(1) With respect to a grant, the Social Security Administration, and

(2) With respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be

considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for *grant* and *subgrant* in this section and except where qualified by Federal) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined in this section.

Expenditure report means:

(1) For nonconstruction grants, the SF—269 ''Financial Status Report'' (or other equivalent report);

(2) For construction grants, the SF—271 ''Outlay Report and Request for Reimbursement'' (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance that provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to SSA's portion of real property, equipment or supplies, means the same percentage as SSA's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

SSA means the Social Security Administration.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance that is excluded from the definition of grant in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than equipment as defined in this part.

Suspension means depending on the context, either:

(1) Temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or

(2) An action taken by a suspending official in accordance with SSA regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. ''Termination'' does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(2) Withdrawal of the unobligated balance as of the expiration of a grant;

(3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or

(4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services that benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by SSA that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 437.4 Applicability.

Subparts A through D of this part do not apply to grants and subgrants to governments issued under Federal statutes or regulations authorized in accordance with the exception provision of § 437.6, nor do they apply to grants and subgrants to State and local institutions of higher education or State and local hospitals.

§ 437.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials apply to grants and subgrants to governments only to the extent they are required by statute, or authorized in accordance with the exception provision in § 437.6.

§ 437.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, SSA may not impose additional administrative requirements except in codified regulations published in the **Federal Register**.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by SSA.

Subpart B—Pre-Award Requirements

§ 437.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs that do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to SSA for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants must only use standard application forms or those prescribed by the SSA with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. SSA may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF—424 facesheet, SSA may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 437.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State needs to meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations or

(2) A material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 437.12 Special grant or subgrant conditions for ''high-risk'' grantees.

(a) A grantee or subgrantee may be considered ''high risk'' if SSA determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if SSA determines that an award will be made, special conditions and/or restrictions will correspond to the high-risk condition and will be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If SSA decides to impose such conditions, SSA's awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

Financial Administration

§ 437.20 Standards for financial management systems.

(a) A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records that adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, SSA program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to SSA. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) SSA may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 437.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which SSA will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment must minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees will be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement is the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, SSA may not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, SSA's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and SSA determines that reimbursement is not feasible because the grantee lacks sufficient working capital, SSA may provide cash or a working capital advance basis. Under this procedure, SSA will advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, SSA will reimburse the grantee for its actual cash disbursements. The working capital advance method of payment may not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees must disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees must disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, SSA will not withhold payments for proper charges incurred by grantees or subgrantees unless—(i) The grantee or subgrantee fails to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, will be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 437.43(c).

(3) SSA will not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure

satisfactory completion of work. SSA will make payments when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee must maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees must promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 437.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
(1) State, local or Indian tribal government	OMB Circular A–87.
(2) Private nonprofit organization other than an (i) institution of higher education, (ii) hospital, or (iii) organization named in OMB Circular A–122 as not subject to that circular.	OMB Circular A–122.
(3) Educational institutions	OMB Circular A–21.
(4) For profit organizationother than a hospital and an organization named in OMB Circular A–122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 437.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). SSA may extend this deadline at the request of the grantee.

§ 437.24 Matching or cost sharing.

(a) *Basic rule.* Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions.* (1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 437.25, may not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 437.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.*

(i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been indirect costs. Costs sharing or matching credit for such contributions will be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services.* (1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:

(i) If approval is obtained from SSA, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from SSA as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 437.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, SSA may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 437.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in SSA regulations, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. ''During the grant period'' is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by SSA regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or SSA regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or SSA regulations as program income. (See § 437.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of § 437.31 and § 437.32.

(g) *Use of program income.* Program income will be deducted from outlays that may be both Federal and non-Federal as described in paragraphs (g)(1) through (3) of this section, unless SSA

regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, SSA may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When SSA authorizes the alternatives in paragraphs (g)(2) and (3) of this section, program income in excess of any limits stipulated will also be deducted from outlays.

(1) *Deduction.* Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless SSA authorizes otherwise. Program income that the grantee did not anticipate at the time of the award must be used to reduce SSA and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by SSA and the grantee. The program income must be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (*i.e.*, until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or SSA regulations provide otherwise.

§ 437.26 Non-Federal audit.

(a) *Basic Rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' The audits must be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends $300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, must:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (*e.g.*, program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, grantees and subgrantees must follow the rules in § 437.36.

Changes, Property, and Subawards

§ 437.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the SSA, certain types of post-award changes in budgets and projects require the prior written approval of SSA. Approvals are not valid unless they are in writing, and signed by at least one of the following SSA officials:

(1) The responsible SSA Grants Management Officer; or

(2) The SSA Commissioner or subordinate official with proper delegated authority from the Commissioner.

(b) *Relation to cost principles.* The applicable cost principles (see § 437.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes.* (1) *Nonconstruction projects.* Except as stated in other SSA regulations or an award document, grantees or subgrantees must obtain prior approval from SSA whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by SSA, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever SSA's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (*i.e.*, from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees must obtain prior written approval for any budget revision that would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from SSA before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval from SSA whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator always requires approval unless waived by SSA.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities that are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 437.36 but does not apply to the procurement of equipment, supplies, and general support services.

(5) Providing medical care to individuals under research grants.

(e) *Additional prior approval requirements.* SSA may not require prior approval for any budget revision that is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and must be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 437.22) may be made by letter.

(3) A request by a subgrantee for prior approval must be addressed in writing to the grantee. The grantee will promptly review such request and must approve or disapprove the request in writing. A grantee may not approve any budget or project revision that is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision requested by the subgrantee would result in a change to the grantee's approved project that requires Federal prior approval, the grantee must obtain SSA's approval before approving the subgrantee's request.

§ 437.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purpose, and the grantee or subgrantee may not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee must request disposition instructions from SSA. The instructions must provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating SSA. The amount paid to SSA is computed by applying SSA's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate SSA. The amount due SSA is calculated by applying SSA's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to SSA or to a third-party designated/approved by SSA. The grantee or subgrantee must be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 437.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees must follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment must be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by SSA. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 437.25(a) to earn program income, the grantee or subgrantee may not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of SSA.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place must meet the following minimum requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft will be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by SSA or for other projects or programs currently or previously supported by the Federal government, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to SSA.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and SSA has a right to an amount calculated by multiplying the current market value or proceeds from sale by SSA's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, SSA may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with SSA rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from SSA.

(g) *Right to transfer title.* SSA may reserve the right to transfer title to the Federal Government or a third party named by SSA when such a third party is otherwise eligible under existing statutes. Such transfers are subject to the following standards:

(1) The property must be identified in the grant or otherwise made known to the grantee in writing.

(2) SSA will issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If SSA fails to issue disposition instructions within the 120 calendar-day period the grantee must follow paragraph (e) of this section.

(3) When title to equipment is transferred, the grantee will be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 437.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee must compensate SSA for its share.

§ 437.34 Copyrights.

SSA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 437.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.''

§ 437.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State must ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees must follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees must use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees must maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees must maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee may participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any such persons, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents may neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct must provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. SSA may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures must provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis must be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees must maintain records sufficient to detail the significant history of a procurement. These records must include, but are not necessarily limited to the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees must use time and materials type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. SSA will not substitute its judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees must have protest procedures to handle and resolve disputes relating to their procurements and must in all instances disclose information regarding the protest to SSA. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with SSA. Reviews of protests by SSA Federal agency are limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by SSA other than those specified in this paragraph (b)(12) will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees must have written selection procedures for procurement transactions. These procedures must ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description may not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors must be clearly stated; and

(ii) Identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees may not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.* (1) *Procurement by Small Purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(2) *Procurement by sealed bids (formal advertising).* Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (d)(2)(i) of this section apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids must be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids must be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award must be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) *Procurement by competitive proposals.* The technique of competitive proposals is normally conducted with

more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be honored to the maximum extent practical;

(ii) Proposals must be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees must have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards must be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) *Procurement by noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) SSA authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, *i.e.*, verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to SSA for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee must take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, *e.g.*, under professional, consulting, and architectural engineering services contracts. A cost analysis is necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis must be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants are allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (*see* § 437.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting may not be used.

(g) *SSA review.* (1) Grantees and subgrantees must make available, upon request of SSA, technical specifications on proposed procurements where SSA believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally must take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, SSA may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for SSA pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ''brand name'' product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee is exempt from the pre-award review in paragraph (g)(2) of this section if SSA determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by SSA to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews will occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification does not limit SSA's right to survey the system. Under a self-certification procedure, SSA may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee must cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, SSA may accept the bonding policy and requirements of the grantee or subgrantee provided SSA has made a determination that the SSA's interest is adequately protected. If such a determination has not been made, the minimum requirements are as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The ''bid guarantee'' will consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A ''payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. SSA is permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts more than the simplified acquisition threshold).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

(7) Notice of SSA requirements and regulations pertaining to reporting.

(8) Notice of SSA requirements and regulations pertaining to patent rights with respect to any discovery or invention that arises or is developed in the course of or under such contract.

(9) SSA requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, SSA, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

§ 437.37 Subgrants.

(a) *States.* States must follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States must:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 437.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by SSA.

(b) *All other grantees.* All other grantees must follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees must:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 437.10;

(2) Section 437.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 437.21; and

(4) Section 437.50.

Reports, Records, Retention, and Enforcement

§ 437.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* SSA may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by SSA, this report is due on the same date as the final Financial Status Report.

(1) Grantees must submit annual performance reports unless SSA requires quarterly or semi-annual reports. However, performance reports are not required more frequently than quarterly. Annual reports are due 90 days after the grant year, quarterly or semi-annual reports are due 30 days after the reporting period. The final performance report is due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, SSA may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by SSA.

(2) Performance reports must contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees must adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. SSA will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform SSA as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments that enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) *Site visits.* SSA may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) SSA may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 437.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a)(2) and (5) of this section, grantees may use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to SSA, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not use the forms prescribed in this section in dealing with their subgrantees. However, grantees may not impose more burdensome requirements on subgrantees.

(3) Grantees must follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. SSA may issue substantive supplementary instructions only with the approval of OMB. SSA may shade out or instruct the grantee to disregard any line item that SSA finds unnecessary for its decisionmaking purposes.

(4) Grantees are not required to submit more than the original and two copies of forms required under this part.

(5) SSA may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. SSA may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) SSA may waive any report required by this section if not needed.

(7) SSA may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report.* (1) *Form.* Grantees must use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph (e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee must report program outlays and program income on a cash or accrual basis as prescribed by SSA. If SSA requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee will not be required to convert its accounting system but must develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* SSA may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If SSA does not specify the frequency of the report, it must be submitted annually. A final report is required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they are due 30 days after the reporting period. When required on an annual basis, they are due 90 days after the grant year. Final reports are due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report.* (1) *Form.* (i) For grants paid by letter or

credit, Treasury check advances or electronic transfer of funds, the grantee must submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by SSA to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the ''Remarks'' section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by SSA, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, SSA may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement.* (1) *Advance payments.* Requests for Treasury check advance payments must be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form may not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants must also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in paragraph (b)(3) of this section.

(e) *Outlay report and request for reimbursement for construction programs.* (1) *Grants that support construction activities paid by reimbursement method.* (i) Requests for reimbursement under construction grants must be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. SSA may, however, prescribe the Request for Advance or Reimbursement form, specified in paragraph (d) of this section, instead of this form.

(ii) The frequency for submitting reimbursement requests is discussed in paragraph (b)(3) of this section.

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee must report its outlays to SSA using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. SSA will provide any necessary special instruction. However, frequency and due date are governed by paragraphs (b)(3) and (4) of this section.

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances must be requested on the form specified in paragraph (d) of this section.

(iii) SSA may substitute the Financial Status Report specified in paragraph (b) of this section for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs is governed by paragraph (b)(2) of this section.

§ 437.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees that are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 437.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, SSA may make special arrangements with grantees and subgrantees to retain any records that are continuously needed for joint use. SSA will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by SSA, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period.* (1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to SSA its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of SSA.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then

the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records.* (1) *Records of grantees and subgrantees.* SSA and the Comptroller General of the United States, or any of their authorized representatives, have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records. Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 437.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, SSA may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by SSA,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, SSA will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless SSA expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to ''Debarment and Suspension'' under E.O. 12549 (see § 437.35).

§ 437.44 Termination for convenience.

Except as provided in § 437.43, awards may be terminated in whole or in part only as follows:

(a) By SSA with the consent of the grantee or subgrantee in which case the two parties will agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to SSA, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, SSA determines that the remaining portion of the award will not accomplish the purposes for which the award was made, SSA may terminate the award in its entirety under either § 437.43 or paragraph (a) of this section.

Subpart D—After-the-Grant Requirements

§ 437.50 Closeout.

(a) *General.* SSA will close out the award when it determines that all applicable administrative actions and all required work of the grant have been completed.

(b) *Reports.* (1) Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, SSA may extend this timeframe. These may include but are not limited to:

(i) Final performance or progress report.

(ii) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable).

(iii) Final request for payment (SF–270) (if applicable).

(iv) Invention disclosure (if applicable).

(v) Federally-owned property report:

(2) In accordance with § 437.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from SSA of property no longer needed.

(c) *Cost adjustment.* SSA will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) SSA will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to SSA any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 437.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) SSA's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 437.42;

(d) Property management requirements in § 437.31 and § 437.32; and

(e) Audit requirements in § 437.26.

§ 437.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the

grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, SSA may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, SSA will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR chapter II). Litigation or the filing of any form of appeal does not extend the date from which interest is computed.

Subpart E—Entitlement [Reserved]

[FR Doc. 03–11852 Filed 5–23–03; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 438

RIN 0960–AE29

Restrictions on Lobbying

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final rules establish new regulations dealing with the restrictions on lobbying contained in the Common Rule, ''New Restrictions on Lobbying,'' commonly referred to as the Byrd Anti-Lobbying Amendment common rule. The Social Security Independence and Program Improvements Act of 1994 established SSA as an independent agency separate from the Department of Health and Human Services (HHS), effective on March 31, 1995. To implement our own set of grants regulations, we have essentially codified the text of the Common Rule. These final rules, along with the final rules we are publishing elsewhere in today's **Federal Register**, establish SSA grants regulations, separate from those of HHS, effective upon publication.

EFFECTIVE DATE: These final rules are effective May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Phyllis Y. Smith, Chief Grants Management Officer, Office of Operations Contracts and Grants, Office of Acquisition and Grants, SSA, 1710 Gwynn Oak Ave., Baltimore, MD 21207–5279; telephone (410) 965–9518; FAX (410) 966–9310.

SUPPLEMENTARY INFORMATION:

I. Background

Section 319 of Pub. L. 101–121, enacted October 23, 1989, amended title 31, United States Code, by adding a new section 1352, entitled ''Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions,'' commonly known as the Byrd Anti-Lobbying Amendment. This law prohibits the recipient of a Federal contract, grant, loan or cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions:

- The awarding of any Federal contract,
- The making of any Federal grant,
- The making of any Federal loan,
- The entering into of any cooperative agreement, and
- The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

The law also imposes requirements for disclosure and certification related to lobbying by recipients of any of the covered Federal actions. As called for by section 319 of Public Law 101–121, on December 18, 1989 (published December 20, 1989), the Office of Management and Budget (OMB) issued interim final guidance entitled ''Governmentwide Guidance for New Restrictions on Lobbying,'' which called for governmentwide implementation of, and compliance with, the requirements of section 1352.

HHS implements the provisions of the Byrd Anti-Lobbying Amendment common rule through its regulations at 45 CFR part 93. Prior to March 31, 1995, SSA was an operating component of HHS. As a result of Public Law 103–296, SSA became an independent agency on March 31, 1995. However, pursuant to section 106(b) of that law, the HHS regulations at 45 CFR part 93 have remained applicable to SSA. In order to implement our own set of grants regulations dealing with lobbying, we are essentially adopting the text of the anti-lobbying common rule at 20 CFR part 438. Part 438 is similar in all material respects to 45 CFR part 93 and to the governmentwide anti-lobbying common rule, which implements the requirements of section 319, Public Law 101–121 (31 U.S.C. 1352). HHS regulations at 45 CFR part 93 will cease to be applicable to SSA on the effective date of these regulations, in accordance with section 106(b) of Public Law 103–296.

II. Differences Between Part 438 and Common Rule/Part 93

A. In § 438.100(a), we have corrected the spelling of the word ''agreement'' where it is initially used in the term ''cooperative agreement.''

B. In the second sentence of § 408.300(c), we have changed the word ''or'' to ''of.'' The sentence properly reads ''For example, drafting of a legal document accompanying a bid * * *''.

C. Throughout new part 438, we have replaced, where appropriate, references to ''awarding agency(ies)'' with references to SSA. We have also made numerous nonsubstantive changes to make these rules easier for the public to read and understand.

Regulatory Procedures

Justification for Final Rule

Section 702(a)(5) of the Social Security Act (Act) makes the regulations we prescribe subject to the rulemaking procedures established under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. These procedures generally require publication of notice of the proposed rulemaking and the solicitation of comments from interested persons. However, the APA provides exceptions to notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

After due consideration, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking because such procedure would be unnecessary. These final regulations adopt as SSA regulations the provisions of the governmentwide anti-lobbying common rule without substantive change. Pursuant to section 106(b) of Public Law 103–296, the HHS regulations at 45 CFR part 93, which implement the provisions of the anti-lobbying common rule, remain applicable to SSA until such time as these regulations become effective. The differences in these regulations over those of the anti-lobbying common rule or those of 45 CFR part 93 are not substantive. Accordingly, promulgation of these regulations pursuant to notice and comment rulemaking is unnecessary and may be dispensed with pursuant to 5 U.S.C. 553(b)(B).

Waiver of 30-Day Delay in Effective Date

As indicated above, section 702(a)(5) of the Act makes the regulations we

prescribe subject to the rulemaking procedures established under section 553 of the APA. Section 553(d) of the APA requires that the effective date of a substantive rule be no less than 30 days after its publication, except in cases of: Rules which grant or recognize an exemption or relieve a restriction; interpretative rules and statements of policy; or as otherwise provided by the agency for good cause found and published with the rule.

Under 5 U.S.C. 553(d)(3), good cause exists for dispensing with the minimum 30-day period between publication date and effective date. As indicated above, these regulations adopt without change the substantive provisions of the anti-lobbying common rule. A 30-day delay in the effective date of these regulations would serve no purpose since, during such delay, the identical provisions of Part 93, which implement the provisions of the anti-lobbying common rule, would remain applicable. Accordingly, these regulations are effective on publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and have determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because this rule merely reflects the adoption of existing grant policies and procedures by SSA and does not promulgate any new policies or procedures which would impact the public. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that the Office of Management and Budget has approved the information collection requirements contained in § 438.110 of these final rules. The OMB Control Number for this collection is 0348–0046 (Standard Form—LLL (Disclosure Form to Report Lobbying)

(Catalog of Federal Domestic Assistance: Program No. 96.007—Social Security—Research and Demonstration; and Program No. 96.008—Social Security Administration—Benefits Planning, Assistance, and Outreach Program)

List of Subjects in 20 CFR Part 438

Administrative practice and procedures, Federal procurement programs, Grant programs.

Dated: April 25, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are adding a new part 438 to chapter III of title 20 of the Code of Federal Regulations to read as follows:

■ 1. Part 438 is added to read as follows:

PART 438—RESTRICTIONS ON LOBBYING

Subpart A—General

Sec.
438.100 Conditions on use of funds.
438.105 Definitions.
438.110 Certification and disclosure.

Subpart B—Activities by Own Employees

438.200 Agency and legislative liaison.
438.205 Professional and technical services.
438.210 Reporting.

Subpart C—Activities by Other than Own Employees

438.300 Professional and technical services.

Subpart D—Penalties and Enforcement

438.400 Penalties.
438.405 Penalty procedures.
438.410 Enforcement.

Subpart E—Exemptions

438.500 Secretary of Defense.

Subpart F—Agency Reports

438.600 Semi-annual compilation.
438.605 Inspector General report.
Appendix A to Part 438—Certification Regarding Lobbying
Appendix B to Part 438—Disclosure Form to Report Lobbying

Authority: 5 U.S.C. 301.

Subpart A—General

§ 438.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of SSA, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from SSA a Federal contract, grant, loan, or cooperative agreement must file with SSA a certification, set forth in Appendix A to this part, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from SSA a Federal contract, grant, loan, or a cooperative agreement must file with SSA a disclosure form, set forth in Appendix B to this part, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from SSA a commitment providing for the United States to insure or guarantee a loan must file with SSA a statement, set forth in Appendix A to this part, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of SSA, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from SSA a commitment providing for the United States to insure or guarantee a loan must file with SSA a disclosure form, set forth in Appendix B to this part, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of SSA, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 438.105 Definitions.

For purposes of this part:

Commissioner means the Commissioner of Social Security.

Covered Federal action means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Covered Federal action does not include receiving from

an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

Federal contract means an acquisition contract awarded by the Social Security Administration, including those subject to the Federal Acquisition Regulation (FAR) (48 CFR chapter 1), and any other acquisition contract for real or personal property or services not subject to the FAR.

Federal cooperative agreement means a cooperative agreement SSA enters into.

Federal grant means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

Federal loan means a loan made by SSA. The term does not include loan guarantee or loan insurance.

Indian tribe and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

Influencing or *attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee of SSA, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Loan guarantee and *loan insurance* means SSA's guarantee or insurance of a loan made by a person.

Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of SSA includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

SSA means the Social Security Administration.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§ 438.110 Certification and disclosure.

(a) Each person must file a certification, and a disclosure form, if required, with each submission that initiates SSA consideration of that person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person must file a certification, and a disclosure form, if required, if he or she receives:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person must file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by that person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding $100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,

(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement, must file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, must be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person must forward all disclosure forms to SSA.

(f) Any certification or disclosure form filed under paragraph (e) of this section will be treated as a material representation of fact upon which all receiving tiers must rely. All liability arising from an erroneous representation will be borne solely by the tier filing that representation and will not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C of this part.

Subpart B—Activities by Own Employees

§ 438.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 438.100(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by SSA or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with SSA (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for SSA's use.

(d) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for SSA to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from SSA pursuant to the provisions of the Small Business Act, as amended by Public Law 95–507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ 438.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 438.100(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, *professional and technical services* are limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§ 438.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§ 438.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 438.100(a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § 438.110 (a) and (b) regarding filing a

disclosure form by each person, if required, do not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, *professional and technical services* are limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis that directly apply to their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ 438.400 Penalties.

(a) Any person who makes an expenditure prohibited by this part is subject to a civil penalty of not less than $10,000 and not more than $100,000 for each prohibited expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B to this part) to be filed or amended if required by this part is subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is begun does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action begins with respect to a failure when an investigating official determines in writing to begin an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, SSA will consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of the person to continue in business, any prior violations by the person, the degree of culpability of the person, the ability of the person to pay the penalty, and any other matters that may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section are subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons are subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the Commissioner or his or her designee.

(f) Imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of the civil penalty.

§ 438.405 Penalty procedures.

We will impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, to the extent these provisions are not inconsistent with the requirements in this part.

§ 438.410 Enforcement.

The Commissioner of Social Security will take any actions necessary to ensure that the provisions in this part are vigorously implemented and enforced.

Subpart E—Exemptions

§ 438.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§ 438.600 Semi-annual compilation.

(a) The Commissioner of Social Security will collect and compile the disclosure reports (see Appendix B to this part) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the 6-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, will be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters will be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information will not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order will be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information will not be available for public inspection.

(e) The first semi-annual compilation was submitted on May 31, 1990, and contains a compilation of the disclosure

reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies designated by the Office of Management and Budget (OMB) were required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives by May 31, 1991. OMB provided detailed specifications in a memorandum to these agencies.

(g) SSA will keep the originals of all disclosure reports in our official files.

§ 438.605 Inspector General report.

(a) The Inspector General of Social Security, or other official as specified in paragraph (b) of this section, will prepare and submit to Congress each year an evaluation of SSA compliance with, and the effectiveness of, the requirements in this part. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) The annual report will be submitted at the same time we submit our annual budget justification to Congress.

(c) The annual report will include the following: All alleged violations covered by the report, the actions taken by the Commissioner in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by SSA in the year covered by the report.

Appendix A to Part 438—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Appendix B to Part 438—Disclosure Form to Report Lobbying

BILLING CODE 4191–02–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLLA, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLLA, if necessary)

15. Continuation Sheet(s) SF-LLLA attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

[FR Doc. 03–11853 Filed 5–23–03; 8:45 am]
BILLING CODE 4191–02–C

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 470

[FHWA Docket No. FHWA–97–2394]

RIN 2125–AD74

Federal-Aid Highway System

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA adopts as final an interim final rule that amends the regulation on Federal-aid highway systems to incorporate changes made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the National Highway System Designation Act of 1995 (NHS Act). The purpose of adopting the interim final rule as final is to reflect statutory changes in defining the Federal-aid highway systems, reduce regulatory requirements and simplify recordkeeping requirements imposed on States, and consolidate (in appendices to the regulation) all nonregulatory guidance material issued previously by the FHWA on this subject.

EFFECTIVE DATES: June 26, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Clark, Office of Interstate and Border Planning (HEPI), (202) 366–5006, or Ms. Grace Reidy, Office of the Chief Counsel (HCC–40), (202) 366–6226. Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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

Background

The FHWA published an interim final rule on part 470, subpart A on June 19, 1997, at 62 FR 33351. Interested persons were invited to submit comments to FHWA docket No. FHWA–97–2394. The interim final rule amended the regulation on Federal-aid highway systems to (1) reflect statutory changes made by the ISTEA (Pub. L. 102–240, 105 Stat. 1914 (1991)) and the NHS Act (Pub. L. 104–59, 109 Stat. 568 (1995)); (2) reduce regulatory requirements and simplify recordkeeping requirements imposed on the States; and (3) consolidate, in appendices to the regulation, all relevant nonregulatory guidance previously issued in the FHWA's policy memoranda and the ''Federal-Aid Policy Guide.'' This rule has been in effect since July 21, 1997.

Summary of Comments

The FHWA received four comments, two from State transportation departments (Texas and Illinois), one from the Advocates for Auto and Highway Safety (AAHS) and one from a private individual.

The Illinois DOT found the interim final rule to be satisfactory.

The Texas DOT commented that Appendix B to part 470 does not address access points to the Interstate System as required by the FHWA and asked for a clarification. The policy on Interstate System access points is addressed in a separate policy statement that was updated and published in the **Federal Register** on February 11, 1998, at 63 FR 7045. It can also be accessed at *http://www.fhwa.dot.gov/programadmin/fraccess.html* .

The Texas DOT also commented that the FHWA omitted an obsolete requirement related to the former Interstate Cost Estimates.

The AAHS objected to issuing this material as an interim final rule with an after-the-fact comment period. The FHWA believes that because the amendments made in the interim final rule were statutorily mandated, incorporated existing policy, or were well-established procedures, requirements, or practices, that prior notice and an opportunity for comment was unnecessary. The amendments made by the interim final rule were specifically designed to simplify administrative procedures, minimize regulatory burdens, and provide flexibility for accomplishing required systems. Of the two State DOTs that commented, both were in favor of the change and only one pointed out a possible omission mentioned previously. Additionally, the FHWA was careful in the regulatory wording to refer to the appendices as guidance to be considered in carrying out the procedures of the regulation.

The private individual correctly pointed out an error in the miles to kilometers conversion factor noted in the preamble. The rule language in the interim final rule uses the correct factor.

Conclusion

For the reasons stated above, the FHWA adopts as a final rule the interim final rule published on June 19, 1997, at 62 FR 33351. The FHWA acknowledges that the definition of ''consultation'' in this rulemaking for Part 470 of title 23, CFR, is not the same as the definition of ''consultation'' in Part 450 of title 23, CFR. This action does not change the definition in Part 450 or the way the FHWA administers Part 450.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or the U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rule will be minimal. This action merely adopts as final the interim final rule that has been in effect since July 21, 1997.

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this final rule on small entities and has determined it will not have a significant economic impact on a substantial number of small entities. This final rule adopts as final the interim final rule that clarifies, streamlines, and simplifies Federal-aid highway systems policies for modification and management of the systems. This rule reduces the administrative burden on the States associated with the Federal-aid systems actions.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year.

Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The Federal-aid highway program permits this type of flexibility to the States.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

By adopting as final the interim final rule, we have permanently eliminated many of the administrative procedures and recordkeeping requirements related to the Federal-aid highway system actions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000. This action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. Although this proposal is a significant regulatory action under Executive Order 12866, we have determined that it is not a significant energy action under that order, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This action is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This action will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 470

Grant programs—transportation, Highway planning, Highways and roads.

■ In consideration of the foregoing, and under the authority of 23 U.S.C. 103(b)(2), 103(e)(1), (e)(2), and (e)(3), 103(f), 134, 135, and 315; and 49 CFR 1.48(b)(2), the interim final rule amending 23 CFR part 470, subpart A which was published at 62 FR 33351 on June 19, 1997, is adopted as a final rule without change.

Issued on: May 7, 2003.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 03–13066 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 575

Iraqi Sanctions Regulations; Authorizations of Non-Commercial Funds Transfers and Related Transactions, Activities by the U.S. Government and Its Contractors or Grantees, Privately Financed Humanitarian Transactions, and Certain Exports and Reexports to Iraq

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule.

SUMMARY: The Office of Foreign Assets Control (''OFAC'') of the U.S. Department of the Treasury is amending the Iraqi Sanctions Regulations, to include four general licenses issued May 7, 2003. Subject to certain conditions, these general licenses authorize the following activities involving Iraq: non-commercial funds transfers (including family remittances) and related transactions, activities by the U.S. Government and its contractors or grantees, privately financed humanitarian transactions, and certain exports and reexports to Iraq. OFAC also is publishing a technical amendment to its regulatory definition of the terms ''humanitarian activities,'' ''humanitarian purposes,'' and ''humanitarian support.''

DATES: Effective May 7, 2003. Written comments must be received no later than July 28, 2003.

ADDRESSES: Comments may be submitted to the Chief of Records, ATTN: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Alternatively, comments may be submitted via facsimile to the Chief of Records at 202/622–1657 or via OFAC's Web site *http://www.treas.gov/offices/enforcement/ofac/comment.html.*

FOR FURTHER INFORMATION CONTACT: OFAC's Chief of Licensing, tel. 202/622–2480, Chief of Policy Planning and Program Management, tel. 202/622–2500, or Chief Counsel, tel. 202/622–2410.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1990, upon Iraq's invasion of Kuwait, the President issued Executive Order 12722, declaring a national emergency with respect to Iraq. This order, issued under the authority of, inter alia, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the U.S. Code, imposed economic sanctions, including a complete trade embargo, against Iraq. In keeping with United Nations Security Council Resolution 661 of August 6, 1990, and under the United Nations Participation Act (22 U.S.C. 287c), the President also issued Executive Order 12724 of August 9, 1990, which imposed additional restrictions. The Iraqi Sanctions Regulations, 31 CFR part 575, implement Executive Orders 12722 and 12724 and are administered by the Treasury Department's Office of Foreign Assets Control (''OFAC'').

In light of recent developments in Iraq, OFAC issued four general licenses on May 7, 2003, to authorize additional transactions involving Iraq. The new sections published today incorporate these four general licenses into the Iraqi Sanctions Regulations.

Paragraph (a) of new § 575.529 authorizes U.S. persons to transfer funds to any person in Iraq for non-commercial humanitarian purposes, including family remittances, provided that no U.S. person may transfer more than $500 per month to any person in Iraq. Paragraph (b) authorizes U.S. financial institutions to engage in all transactions ordinarily incident to such transfers of funds. Paragraph (c) provides that this section does not authorize transfers from blocked accounts.

Paragraph (a) of new § 575.530 authorizes activities by the U.S. government and its contractors or grantees. Paragraph (b)(1) contains a restriction on the exportation or reexportation of any goods or technology (including technical data or other information) controlled by the Department of Commerce under the Export Administration Regulations (15 CFR chapter VII, subchapter C) for exportation to Iraq; any such exports or reexports must be separately authorized by OFAC. Paragraph (b)(2) describes the circumstances in which some exports or reexports of goods to Iraq must be submitted to the United Nations ''661 Committee.'' Paragraph (c) requires that all payments and funds transfers initiated pursuant to this authorization, and all related documentation, reference this section number. Note 1 to section 575.530 explains that the activities of any subcontractors or other persons who are engaged to perform activities within the scope of the relevant contract or grant are also authorized and subject to the same restrictions. Note 2 to section 575.530 provides information concerning the use of U.S. passports for travel to, in, or through Iraq.

New § 575.531 authorizes all transactions that are necessary to provide privately financed humanitarian support, or to plan or prepare for the provision of humanitarian support, to the Iraqi people in Iraq. Paragraph (a) includes examples of some of the newly-authorized transactions. The note to paragraph (a) references the definition of ''humanitarian support'' that appears elsewhere in the Iraqi Sanctions Regulations. Paragraphs (b) and (c) contain special provisions on the exportation or reexportation of goods or technology to Iraq. Paragraph (d) provides that this new section does not authorize any transactions with persons on the Department of Defense's 55-person Watch List. Paragraph (e) requires that all payments and funds transfers initiated pursuant to this authorization, and all related documentation, reference this section number. The note to § 575.531 provides information concerning the use of U.S. passports for travel to, in, or through Iraq.

New § 575.532 authorizes the exportation from the United States or, if subject to U.S. jurisdiction, the exportation or reexportation from a third country to Iraq of any goods, subject to two conditions. First, the exportation or reexportation of any goods or technology (including technical data or other information) controlled by the Department of Commerce under the Export Administration Regulations for exportation to Iraq, or listed on the United Nations Goods Review List, must be separately authorized by OFAC. Second, any exportation or reexportation of goods to Iraq must be submitted to the United Nations 661 Committee to the extent and in the manner required under applicable UN Security Council resolutions; for information concerning this second condition, exporters or reexporters should contact the State Department office identified in § 575.532.

These new authorizations do not eliminate the need to comply with other provisions of law, including any aviation, financial, or trade requirements of agencies other than OFAC.

OFAC also is amending § 575.330, which defines the terms ''humanitarian activities,'' ''humanitarian purposes,'' and ''humanitarian support.'' OFAC is amending section 575.330 to remove the phrase ''[f]or purposes of §§ 575.527 and 575.528,'' so that the definition is not limited only to those two sections of the Iraqi Sanctions Regulations.

Request for Comments

Because amendment of these regulations involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the ''APA'') requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. However, because of the importance of the issues addressed in these regulations, this rule is being issued in interim form and comments will be considered in the development of a final rule.

Accordingly, OFAC encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments may address the impact of the regulations on the submitter's activities, whether of a commercial, non-commercial or humanitarian nature, as well as changes that would improve the clarity and organization of the regulations.

The period for submission of comments will close July 28, 2003. The address for submitting comments appears near the beginning of this document. OFAC will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. OFAC will not accept public comments accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason. OFAC will return such a submission to the originator without considering the comments in the development of final regulations. In the

interest of accuracy and completeness, OFAC requires comments in written form.

All public comments on these regulations will be a matter of public record. Copies of the public record concerning these regulations will be made available not sooner than August 25, 2003, and will be obtainable from OFAC's Web site *http://www.treas.gov/ofac.* If that service is unavailable, written requests for copies may be sent to Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave, NW., Washington, DC 20220, Attn: Chief, Records Division.

Electronic Availability

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Paperwork Reduction Act

The collections of information related to these regulations can be found in 31 CFR part 501. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget under control number 1505–0164.

List of Subjects in 31 CFR Part 575

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign trade, Humanitarian aid, Imports, Iran, Iraq, Oil imports, Penalties, Petroleum, Petroleum products, Reporting and recordkeeping requirements, Specially designated nationals, Terrorism, Travel restrictions.

■ For the reasons stated in the preamble, 31 CFR part 575 is amended as set forth below:

PART 575—IRAQI SANCTIONS REGULATIONS

■ 1. The authority citation for 31 CFR part 575 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–513, 104 Stat. 2047–2055 (50 U.S.C. 1701 note); E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1990 Comp., p. 297; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317.

Subpart C—General Definitions

■ 2. Revise § 575.330 to read as follows:

§ 575.330 Humanitarian activities, humanitarian purposes, and humanitarian support.

The terms *humanitarian activities, humanitarian purposes,* and *humanitarian support* mean, as these terms have been defined by the Department of State for relevant United Nations Security Council Resolutions on Iraq, humanitarian relief, educational, cultural, recreational, and human rights-related activities, and activities to ameliorate the effects of or to investigate war crimes. Such purposes may include preparatory activities and transactions.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 3. Add a new § 575.529 to subpart E to read as follows:

§ 575.529 Non-commercial funds transfers and related transactions.

(a) U.S. persons are authorized to transfer funds to any person in Iraq for non-commercial humanitarian purposes, including family remittances, provided that no U.S. person may transfer more than $500 per month to any person in Iraq.

(b) U.S. financial institutions are authorized to engage in all transactions ordinarily incident to the transfer of funds authorized by paragraph (a) of this section, including the opening of new correspondent accounts for funds transfers with Iraqi financial institutions. U.S. financial institutions may rely on originators of funds transfers with regard to compliance with this part.

(c) This section does not authorize transfers from blocked accounts.

■ 4. Add a new § 575.530 to subpart E to read as follows:

§ 575.530 Activities by the U.S. Government and its contractors or grantees.

(a) Subject to the provisions of paragraph (b) of this section, U.S. government agencies and their contractors or grantees are authorized to engage in all transactions otherwise prohibited by subpart B of this part that are within the scope of their official duties or the relevant U.S. government contracts or grants.

(b)(1) The exportation from the United States or, if subject to U.S. jurisdiction, the exportation or reexportation from a third country to Iraq of any goods or technology (including technical data or other information) controlled by the Department of Commerce under the Export Administration Regulations (15 CFR chapter VII, subchapter C) for exportation to Iraq must be separately authorized by or pursuant to this part.

(2) If the contracting or granting U.S. government agency has determined that the relevant contract or grant is not in support of U.S. government humanitarian assistance or reconstruction efforts in Iraq, or not in support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in Iraq, then the exportation or reexportation of any goods to Iraq must be submitted to the 661 Committee to the extent and in the manner required under applicable UN Security Council resolutions. If this paragraph (b)(2) applies to a proposed exportation or reexportation, the exporter or reexporter should contact the Office of Peacekeeping and Humanitarian Operations, Room 5323, U.S. Department of State, 2201 C Street NW., Washington, DC 20520 (tel 202/647–2708, fax 202/647–3261) for procedures concerning submissions to the 661 Committee.

(c) All payments and funds transfers initiated pursuant to this authorization, and all related documentation, must reference this section number.

Note 1 to § 575.530: This authorization and the restrictions on certain exportations or reexportations extend to the activities of any subcontractors or other persons who are engaged to perform activities within the scope of the relevant contract or grant. *See* 31 CFR 575.418.

Note 2 to § 575.530: U.S. citizens who wish to travel to Iraq pursuant to this authorization may be required to apply to the Department of State to have their passports validated for travel to Iraq, pursuant to 22 CFR 51.73 and 51.74 and public notices issued thereunder, including Public Notice 4283, 68 FR 8791 (February 25, 2003), as amended by Public Notice 4337, 68 FR 18722 (Apr. 16, 2003), and any subsequent public notices regarding the restriction on the use of U.S. passports for travel to, in or through Iraq. Such applications, if required, should be submitted to the Deputy Assistant Secretary for Passport Services, ATTN: Office of Passport Policy and Advisory Services, U.S. Department of State, 2401 E Street, NW., Washington, DC 20522–0907. Such applications must include the applicant's name, date and place of birth, dates of proposed travel, and purpose of the trip. This general license does not in any way create a presumption in favor of passport validation.

■ 5. Add a new § 575.531 to subpart E to read as follows:

§ 575.531 Privately financed humanitarian transactions.

(a) Subject to the conditions and limitations set forth in paragraphs (b)–(e) of this section, all transactions otherwise prohibited by subpart B of this part that are necessary to provide privately financed humanitarian support, or to plan or prepare for the provision of humanitarian support, to the Iraqi people in Iraq are authorized. Transactions authorized by this section include, but are not limited to, the exportation to Iraq of goods and services necessary for the provision of humanitarian support, the financing of such humanitarian support, travel-related transactions necessary to provide humanitarian support, and related funds transfers by U.S. financial institutions.

Note to paragraph (a): The term *humanitarian support* means, as this term has been defined by the Department of State for relevant United Nations Security Council Resolutions on Iraq, humanitarian relief, educational, cultural, recreational, and human rights-related activities, and activities to ameliorate the effects of or to investigate war crimes. Such purposes may include preparatory activities and transactions. *See* 31 CFR 575.330.

(b) The exportation from the United States or, if subject to U.S. jurisdiction, the exportation or reexportation from a third country to Iraq of any goods or technology (including technical data or other information) controlled by the Department of Commerce under the Export Administration Regulations (15 CFR chapter VII, subchapter C) for exportation to Iraq or listed on the United Nations Goods Review List must be separately authorized by or pursuant to this part.

(c) Any exportation or reexportation of goods to Iraq pursuant to this authorization must be submitted to the United Nations 661 Committee to the extent, and in the manner, required under applicable UN Security Council resolutions. For procedures concerning submissions to the 661 Committee, the exporter or reexporter should contact the Office of Peacekeeping and Humanitarian Operations, Room 5323, U.S. Department of State, 2201 C Street NW., Washington, DC 20520 (tel 202/647–2708, fax 202/647–3261).

(d) This section does not authorize any transactions with persons on the Department of Defense's 55-person Watch List.

(e) All payments and funds transfers initiated pursuant to this authorization, and all related documentation, must reference this section number.

Note to § 575.531: U.S. citizens who wish to travel to Iraq pursuant to this authorization may be required to apply to the Department of State to have their passports validated for travel to Iraq, pursuant to 22 CFR 51.73 and 51.74 and public notices issued thereunder, including Public Notice 4283, 68 FR 8791 (February 25, 2003), as amended by Public Notice 4337, 68 FR 18722 (Apr. 16, 2003), and any subsequent public notices regarding the restriction on the use of U.S. passports for travel to, in or through Iraq. Such applications, if required, should be submitted to the Deputy Assistant Secretary for Passport Services, ATTN: Office of Passport Policy and Advisory Services, U.S. Department of State, 2401 E Street, NW., Washington, DC 20522–0907. Such applications must include the applicant's name, date and place of birth, dates of proposed travel, and purpose of the trip. This general license does not in any way create a presumption in favor of passport validation.

■ 6. Add a new § 575.532 to subpart E to read as follows:

§ 575.532 Certain exports and reexports to Iraq.

The exportation from the United States or, if subject to U.S. jurisdiction, the exportation or reexportation from a third country to Iraq of any goods is authorized, provided that the exportation or reexportation of any goods or technology (including technical data or other information) controlled by the Department of Commerce under the Export Administration Regulations (15 CFR chapter VII, subchapter C) for exportation to Iraq, or listed on the United Nations Goods Review List, must be separately authorized by or pursuant to this part, and any exportation or reexportation to Iraq must be submitted to the 661 Committee to the extent and in the manner required under applicable UN Security Council resolutions. For procedures concerning submissions to the 661 Committee, the exporter or reexporter should contact the Office of Peacekeeping and Humanitarian Operations, Room 5323, U.S. Department of State, 2201 C Street NW., Washington, DC 20520 (tel 202/647–2708, fax 202/647–3261).

Dated: May 9, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 20, 2003.

Juan C. Zarate,

Deputy Assistant Secretary (Terrorist Financing and Financial Crimes), Department of the Treasury.

[FR Doc. 03–13053 Filed 5–20–03; 3:19 pm]

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DEPARTMENT OF DEFENSE

National Security Agency/Central Security Services

32 CFR Part 322

[NSA Reg. 10–35]

Privacy Act; Implementation

AGENCY: National Security Agency/Central Security Services.

ACTION: Final rule.

SUMMARY: The National Security Agency/Central Security Services (NSA/CSS) is revising its Privacy Act Program procedural and exemption rules. Revisions include updating the responsibilities assigned to NSA/CSS personnel, and establishing a queue to process Privacy Act requests. Requesters will no longer be required to wait a long period of time to learn that the Agency has a no records responsive to their requests or to obtain records that require minimal review.

The NSA/CSS exemption rules have been revised to add specific subsections of 5 U.S.C. 552a from which information may be exempt, and to add the reasons for taking the specific subsections.

EFFECTIVE DATES: April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: No comments were received during the public comment period; therefore, the rules are being adopted as published below.

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act.

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act.

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

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

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that this Privacy Act rule for the Department of Defense does not have federalism implications. The rule 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.

List of Subjects in 32 CFR Part 322

Privacy.

■ Accordingly, 32 CFR part 322 is revised to read as follows:

PART 322—NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICES PRIVACY ACT PROGRAM

Sec.
322.1 Purpose and applicability.
322.2 Definitions.
322.3 Policy.
322.4 Responsibilities.
322.5 Procedures.
322.6 Establishing exemptions.
322.7 Exempt systems of records.

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

§ 322.1 Purpose and applicability.

(a) This part implements the Privacy Act of 1974 (5 U.S.C. 552a), as amended and the Department of Defense Privacy Program (32 CFR part 310) within the National Security Agency/Central Security Service (NSA/CSS); establishes policy for the collection and disclosure of personal information about individuals; assigns responsibilities and establishes procedures for collecting personal information and responding to first party requests for access to records, amendments of those records, or an accounting of disclosures.

(b) This part applies to all NSA/CSS elements, field activities and personnel and governs the release or denial of any information under the terms of the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

§ 322.2 Definitions.

Access. The review of a record or a copy of a record or parts thereof in a system of records by an individual.

Confidential source. A person or organization who has furnished information to the federal government under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

Disclosure. The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

Employees of NSA/CSS. Individuals employed by, assigned or detailed to the NSA/CSS. This part also applies to NSA/CSS contractor personnel who administer NSA/CSS systems of records that are subject to the Privacy Act.

FOIA Request. A written request for NSA/CSS records, made by any person, that either explicitly or implicitly invokes the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended. FOIA requests will be accepted by U.S. mail or its equivalent, facsimile, or the Internet, or employees of NSA/CSS may hand deliver them.

Individual. A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Corporations, partnerships sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not individuals.

Maintain. Includes maintain, collect, use or disseminate.

Medical Records. Documents relating to the physical care and treatment of an individual.

Privacy Act Request. A written request containing a signature submitted by a U.S. citizen or alien admitted for permanent residence for access to or amendment of records on himself/herself which are contained in a PA system of records. PA requests will be accepted via mail or facsimile, or NSA/CSS employees may hand deliver them. Digital signatures will be accepted via the Internet by October 21, 2003. Until then, PA requests will not be accepted via the Internet. Requests received via the Internet will not be acknowledged. Regardless of whether the requester cites the FOIA, PA, or no law, the request for records will be processed under both this part and the FOIA. Requests for amendments will be processed pursuant to the PA.

Personal information. The collection of two or more pieces of information that is about an individual: *e.g.* name and date of birth, Social Security Number.

Personal notes. Notations created in paper or electronic form for the convenience and at the discretion of the originator, for the originator's eyes only, and over which NSA/CSS exercises no control. Personal notes are not agency records within the meaning of the Privacy Act (PA) or the Freedom of Information Act (FOIA). However, once the personal note, or information contained therein, is shared with another individual, it becomes an Agency record and is subject to the provisions of the FOIA and, if appropriate, the PA.

Psychological Records. Documents relating to the psychological care and treatment of an individual.

Record. Any item, collection, or grouping of information, whatever the storage media (paper, electronic, etc.) about an individual or his or her education, financial transactions, medical history, criminal or employment history, and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice print, or a photograph. The record must be in existence and under the control of NSA/CSS at the time a request is made.

Routine use. The disclosure of a record outside NSA/CSS or the DoD for a use that is compatible with the purpose for which the information was collected and maintained by NSA/CSS. The routine use must be included in the published system of records.

System of Records. A group of records under the control of a federal agency from which personal information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to an individual

§ 322.3 Policy.

(a) The National Security Agency/Central Security Service shall maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of

the Agency, and that is required or authorized to be maintained by statute or Executive Order. Information about an individual shall, to the greatest extent practicable, be collected directly from the individual if the information may result in adverse determinations about the individual's rights, benefits, and privileges under any Federal program. Records used by this Agency in making adverse determinations about an individual shall be maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual. The Agency shall protect the privacy of individuals identified in its records, and shall permit an individual to request access to personal information in records on himself/herself and to request correction or amendment of factual information contained in such records. These policies are consistent with the spirit and intent of the PA, and are subject to exemptions under the Act, as defined in § 322.7, and legal requirements to protect sensitive NSA information such as the intelligence sources and methods the Agency employs to fulfill its mission.

(b) Pursuant to written requests submitted in accordance with the PA, the NSA/CSS shall make records available consistent with the Act and the need to protect government interests pursuant to subsections (d) and (k) of the Privacy Act. Oral requests for information shall not be accepted. Before the Agency responds to a request, the request must comply with the provisions of this part.

(c) In order that members of the public have timely access to unclassified information regarding NSA activities, requests for information that would not be withheld if requested under the FOIA or the PA may be honored through appropriate means without requiring the requester to invoke the FOIA or the PA. Although a record may require minimal redaction before its release, this fact alone shall not require the Agency to direct the requester to submit a formal FOIA or PA request for the record.

§ 322.4 Responsibilities.

(a) The Director's Chief of Staff (DC) is responsible for overseeing the administration of the PA. The Director of Policy (DC3), or the Deputy Director of Policy, if so designated, shall carry out this responsibility on behalf of the Chief of Staff and shall:

(1) Provide policy guidance to NSA/CSS on PA issues.

(2) Provide policy guidance to PA coordinators for processing PA requests from NSA/CSS employees who will be using the records within NSA/CSS spaces.

(3) Provide training of NSA/CSS employees and contractors in the requirements of the PA. Specialized training is provided to special investigators and employees who deal with the news media or the public.

(4) Receive, process, and respond to PA requests from individuals and employees who require the information for use outside of NSA/CSS spaces.

(i) Conduct the appropriate search for and review of records.

(ii) Provide the requester with copies of all releasable material.

(iii) Notify the requester of any adverse determination, including his/her right to appeal an adverse determination to the NSA/CSS Appeal Authority.

(iv) Assure the timeliness of responses.

(5) Receive, process and respond to PA amendment requests to include:

(i) Obtain comments and supporting documentation from the organization originating the record.

(ii) Conduct a review of all documentation relevant to the request.

(iii) Advise the requester of the Agency's decision.

(iv) Notify the requester of any adverse determination, including his/her right to appeal the adverse determination to the NSA/CSS Appeal Authority.

(v) Direct the appropriate Agency organization to amend a record and advise other record holders to amend the record when a decision is made in favor of a requester.

(vi) Assure the timeliness of responses.

(6) Ensure that Agency employees (internal requesters) that have access to NSA/CSS spaces are given access to all or part of a PA record to which the employee was denied by the record holder when, after a review of the circumstances by the Director of Policy, it is determined that access should be granted. For those individuals who do not have access to NSA/CSS spaces see § 322.6 of this part.

(7) Conduct Agency reviews in accordance with OMB Circular A–130[1] and 32 CFR part 310.

(8) Deposit in the U.S. Treasury all fees collected as a result of charges levied for the duplication of records provided under the PA and maintain the necessary accounting records for such fees.

(b) The NSA/CSS Privacy Act Appeal Authority is designated as the reviewing authority for requests for review of denials by the Director of Policy to provide access to a record and/or to amend a record. The PA Appeal Authority is the Deputy Director, NSA. In the absence of the Deputy Director, the Director's Chief of Staff serves as the Appeal Authority.

(c) The General Counsel (GC) or his designee shall:

(1) Advise on all legal matters concerning the PA.

(2) Advise the Director of Policy and other NSA/CSS organizations, as appropriate, of legal decisions including rulings by the Justice Department and actions by the DoD Privacy Board involving the PA.

(3) Review proposed responses to PA requests to ensure legal sufficiency, as appropriate.

(4) Provide a legal review of proposed Privacy Act notices and amendments for submission to the Defense Privacy Office.

(5) Assist, as required, in the preparation of PA reports for the Department of Defense and other authorities.

(6) Review proposals to collect PA information for legal sufficiency, assist in the development of PA statements and warning statements when required and approve prior to use.

(7) Represent the Agency in all judicial actions related to the PA by providing support to the Department of Justice and by keeping the DoD Office of General Counsel apprised of pending PA litigation. A litigation status sheet will be provided to the Defense Privacy Office.

(8) Assist in the education of new and current employees, including contractors, to the requirements of the PA.

(9) Review PA and PA Amendment appeals, prepare responses, and submit them to the NSA/CSS Appeal Authority for final decision.

(10) Notify the Director of Policy of the outcome of all appeals.

(d) The Associate Director for Human Resources Services or designee shall:

(1) Establish the physical security requirements for the protection of personal information and ensure that such requirements are maintained.

(2) Establish and ensure compliance with procedures governing the pledging of confidentiality to sources of information interviewed in connection with inquiries to determine suitability, eligibility or qualifications for Federal employment, Federal contracts, or access to classified information.

(3) Retain copies of records processed pursuant to the PA. The retention schedule is six years from the date

[1] Available from *http://www.whitehouse.gov/omb/circulars/index.html.*

records were provided to the requester if deletions were made and two years if records were provided in their entirety.

(4) Ensure the prompt delivery of all PA requests to the Director of Policy.

(5) Ensure the prompt delivery of all Privacy Act appeals of an adverse determination to the NSA/CSS PA Appeal Authority staff.

(6) Ensure that forms used to collect PA information meet the requirements of the PA.

(7) Compile, when required, estimates of cost incurred in the preparation or modification of forms requiring PA Statements.

(8) Assist in the development of training courses to educate new and current Agency employees, including contractors, of the provisions of the PA.

(9) Respond to PA requests for access to records, as appropriate.

(10) Establish procedures for the protection of personal information and ensure compliance with the procedures.

(e) The Inspector General (IG) shall:

(1) Be alert to Privacy Act compliance and to managerial administrative, and operational problems associated with the implementation of this part and document any such problems and remedial actions, if any, in official reports to responsible Agency officials, when appropriate.

(2) Respond, as appropriate, to PA requests.

(3) Establish procedures for the protection of personal records under the control or in the possession of OIG and ensure compliance with the procedures.

(f) Chiefs of Directorates, Associate Directorates, and Field Elements shall:

(1) Ensure that no systems or subsets of Systems of Records other than those published in the **Federal Register** are maintained within their components or field elements.

(2) Establish rules of conduct for persons who design, use or maintain Systems of Records within their components or field elements and ensure compliance with these rules.

(3) Establish, in consultation with the Associate Director of Human Resources or designee, the physical security requirements for the protection of personal information and ensure that such requirements are maintained.

(4) Ensure that no records are maintained within their components or field elements which describe how any individual exercises rights guaranteed by the First Amendment to the Constitution of the United States unless expressly authorized by statute, or by the individual about whom the record is maintained, or unless pertinent to, and within the scope of, an authorized law enforcement activity.

(5) Ensure that records contained in the Systems of Records within their components or field elements are not disclosed to anyone other than in conformance with the Privacy Act, to include the routine uses for such records published in the **Federal Register**.

(6) Maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the Agency required to be accomplished by statute and Executive Order.

(7) Maintain all records which are used by the Agency in making any determination about any individual with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in any determination.

(8) Establish procedures for protecting the confidentiality of personal records maintained or processed by computer systems and ensure compliance with the procedures.

(9) Designate a primary and alternate PA coordinator to be responsible for PA matters and inform the Office of Policy of the designations. Subordinate PA coordinators may be appointed at office level.

(10) Ensure that the Privacy Act coordinators acquire the necessary training in the theory and administration of the Privacy Act.

(11) Ensure that the Privacy Act coordinators conduct, to the extent practicable, on-the-job PA training of supervisors and records handlers in their organizations.

(12) Respond to PA requests to review records, as appropriate.

(13) Establish procedures for the protection of personal records and ensure compliance with the procedures.

(14) Establish procedures to ensure that requests for copies of PA records needed for external use, outside of NSA/CSS, shall be delivered to the Director of Policy immediately upon receipt once the request is identified as a Privacy Act request or appears to be intended as such a request.

(15) Publish, as necessary, internal PA procedures which are consistent with the Privacy Act and this part.

(16) Maintain an accounting of disclosures of records as described in § 322.5 of this part.

(17) Coordinate with the Office of the General Counsel any proposed new record systems or changes (either alterations or amendments) to existing systems. Notice of new record systems or alterations to existing systems must be published in the **Federal Register** at least 30 days and Congress and the Office of Management and Budget must be given 40 days to review the new/altered system before implementation.

(18) Collect and forward to the Director of Policy information necessary to prepare reports, as requested.

(19) Respond promptly to the Director of Policy and the PA Appeal Authority decisions concerning the granting access to records, amending records, or filing statements of disagreements.

(20) Ensure that forms (paper or electronic) used to collect PA information meet the requirements of the PA.

(21) Establish procedures to ensure that requests to conduct computer matching are forwarded to the Director of Policy.

(g) Each field element shall designate a Privacy Act (PA) Coordinator to ensure compliance with this part and to receive and, where appropriate, process PA requests. Section 322.6 of this part describes the procedure for individuals to gain access to records and the responsibilities of the PA Coordinators. Consistent with the provisions of 32 CFR parts 285 and 286 and 32 CFR part 310 special procedures apply to the disclosure of certain medical records and psychological records. Field elements should consult the PA Coordinator of the Office of Occupational Health, Environment and Safety Services before disclosing such information. (*See* paragraph (d)(9) of this section.)

(h) All NSA/CSS organizations and field elements responsible for electronic/paper forms or other methods used to collect personal information from individuals shall determine, with General Counsel's concurrence, which of those forms or methods require Privacy Act Statements and shall prepare the required statements. The Office of Policy requires all organizations or elements using such forms or methods shall ensure that respondents read, understand, and sign the statements before supplying the requested information. In addition, organizations must obtain the Director of Policy and the Office of General Counsel approval prior to the collection of personal information in electronic format.

§ 322.5 Procedures.

(a) The Director of Policy, or the Deputy Director of Policy, if so designated, shall provide guidance to Privacy Act Coordinators for processing requests and releasing NSA/CSS information within the confines of the NSA/CSS. If any organization or element believes a request to review a PA record should be denied, it shall advise the requester of the procedures

for requesting a review of the circumstances of the case by the Director of Policy.

(b) Persons Authorized Access to NSA/CSS Facilities: (1) Requests from NSA/CSS affiliates with authorized access to NSA/CSS facilities to review and/or obtain a copy of PA records in a Systems of Records for use within NSA/CSS spaces or for the inspection of an accounting of disclosures of the record shall be in writing, using the Privacy Act Information Request form. Requests shall normally be submitted directly to the Privacy Act Coordinator in the office holding the record. In the case of requests for access to records maintained in the individual's own organization, the Privacy Act Coordinator for that organization shall direct the requester to the person or office holding the record. A Privacy Act Information Request form shall be submitted to the holder of each record desired. The Privacy Act Coordinator shall assist supervisors and record handlers in processing the request and shall maintain an accounting for reporting purposes. Individuals shall not be permitted to review or obtain an internal copy of IG, OGC and/or certain security records. The Personnel File, which was available upon request prior to the implementation of the Privacy Act, shall continue to be available for review without citing the Privacy Act or using the Privacy Act Information Request form.

(2) Requests to obtain a copy of PA records for use outside of NSA/CSS shall be forwarded to the Director of Policy, FOIA/PA Services (DC321) using the Privacy Act Information Request form or in any written format and must contain the individual's full name, signature, social security number, description of the records sought and a work or home phone number. Requests shall be processed pursuant to the Privacy Act and the FOIA.

(c) Persons Not Authorized Access to NSA/CSS Facilities: (1) Requests from individuals who do not have authorized access to NSA/CSS facilities must be in writing, contain the individual's full name, current address, signature, social security number and a description of the records sought. The mailing address for the FOIA/PA office is: National Security Agency, ATTN: FOIA/PA Services (DC321), 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

(2) FOIA/PA Services may, at its discretion, require an unsworn declaration or a notarized statement of identity. In accordance with 28 U.S.C. 1746, the language for an unsworn declaration is as follows:

(i) If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

(ii) If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

(d) General provisions regarding access and processing procedures: (1) The requester need not state a reason or otherwise justify the request. If the requester wishes to be accompanied by another person, the individual may be required to furnish a statement authorizing discussion or disclosure of the records in the presence of the other individual. If the requester wishes another person to obtain the records on his/her behalf, the requester shall provide a written statement appointing that person as his/her representative, authorizing that individual access to the records and affirming that such access shall not constitute an invasion of the requester's privacy or a violation of his/her rights under the Privacy Act. In addition, requests from parents or legal guardians for records on a minor may be accepted providing the individual is acting on behalf of the minor and evidence is provided to support his or her parentage (birth certificate showing requester as a parent) or guardianship (a court order establishing guardianship).

(2) The Director of Policy and FOIA/PA Services (DC321) shall endeavor to respond to a direct request to the NSA/CSS within 20 working days of receipt. In the event the FOIA/PA Services cannot respond within 20 working days due to unusual circumstances, the requester shall be advised of the reason for the delay and negotiate a completion date with the requester. Direct requests to NSA/CSS shall be processed in the order in which they are received. Requests referred to NSA/CSS by other government agencies shall be placed in the processing queue according to the date the requester's letter was received by the referring agency, if that date is known. If it is not known, it shall be placed in the appropriate processing queue according to the date of the requester's letter.

(3) FOIA/PA requests for copies of records shall be worked in chronological order within six queues (''super easy,'' ''sensitive/personal easy,'' ''non-personal easy,'' ''sensitive/personal voluminous,'' ''non-personal complex,'' and ''expedite''). The processing queues are defined as follows:

(i) *Super Easy Queue*—The super easy queue is for requests for which no responsive records are located or for material that requires minimal specialized review.

(ii) *Sensitive/Personal Easy Queue*—The sensitive/personal easy queue contains FOIA and PA records that contain sensitive personal information, typically relating to the requester or requester's relatives, and that do not require a lengthy review. DC321 staff members who specialize in handling sensitive personal information process these requests.

(iii) *Non-Personal Easy Queue*—The non-personal easy queue contains all other types of NSA records not relating to the requester, that often contain classified information that may require coordinated review among NSA components, and that do not require a lengthy review. DC321 staff members who specialize in complex classification issues process these requests.

(iv) *Sensitive/Personal Voluminous Queue*—The sensitive/personal voluminous queue contains FOIA and PA records that contain sensitive personal information, typically relating to the requester or requester's relatives, and that require a lengthy review because of the high volume of responsive records. These records may also contain classified information that may require coordinated review in several NSA components. DC321 staff members who specialize in handling sensitive personal information process these requests.

(v) *Non-Personal Complex Queue*—The non-personal complex queue contains FOIA records not relating to the requester that require a lengthy review because of the high volume and/or complexity of responsive records. These records contain classified, often technical information that requires coordinated review among many specialized NSA components, as well as consultation with other government agencies. DC321 staff members who specialize in complex classification issues process these requests.

(vi) *Expedite Queue*—Cases meeting the criteria for expeditious processing as defined in this section will be processed in turn within that queue by the appropriate processing team.

(4) Requesters shall be informed immediately if no responsive records are located. Following a search for and retrieval of responsive material, the initial processing team shall determine which queue in which to place the material, based on the criteria above, and shall so advise the requester. If the material requires minimal specialized review (super easy), the initial

processing team shall review, redact if required, and provide the non-exempt responsive material to the requester immediately. The appropriate specialized processing team on a first in, first out basis within its queue shall process all other material. These procedures are followed so that a requester will not be required to wait a long period of time to learn that the Agency has no records responsive to his request or to obtain records that require minimal review.

(5) Requests for expeditious processing must include justification and a statement certifying that the information is true and correct to the best of the requester's knowledge. Expedited processing shall be granted if the requester demonstrates a compelling need for the information. Compelling need is defined as the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or there would be an imminent loss of substantial due process rights.

(6) A request for expedited handling shall be responded to within 10 calendar days of receipt. The requester shall be notified whether his/her request meets the criteria for expedited processing within that time frame. If a request for expedited processing has been granted, a substantive response shall be provided within 20 working days of the date of the expedited decision. If a substantive response cannot be provided within 20 working days, a response shall be provided as soon as practicable and the chief of FOIA/PA Services shall attempt to negotiate an acceptable completion date with the requester, taking into account the number of cases preceding it in the expedite queue and the volume or complexity of the responsive material.

(7) Upon receipt of a request, FOIA/PA Services (DC321) shall review the request and direct the appropriate PA coordinator to search for responsive records. If the search locates the requested records, the PA coordinator shall furnish copies of the responsive documents to the FOIA/PA office that in turn shall make a determination as to the releasability of the records. All releasable records, or portions thereof, shall be provided to the requester. However, if information is exempt pursuant to the FOIA and PA, the requester shall be advised of the statutory basis for the denial of the information and the procedure for filing an appeal. In the instance where no responsive records are located, the requester shall be advised of the negative results and his/her right to appeal what could be considered an adverse determination. NSA does not have the authority to release another agency's information; therefore, information originated by another government agency shall be referred to the originating agency for its direct response to the requester or for review and return to NSA for response to the requester. The requester shall be advised that a referral has been made, except when notification would reveal exempt information.

(8) The requester shall not be charged a fee for the making of a comprehensible copy to satisfy the request for a copy of the documents. The requester may be charged for duplicate copies of the documents. However, if the direct cost of the duplicate copy is less than $25.00, the fee shall be waived. Duplicating fees shall be assessed according to the following schedule: Office Copy $.15 per page, Microfiche $.25 per page, and Printed Material $.02 per page. All payments shall be made by certified check or money order made payable to the Treasurer of the United States.

(9) A medical/psychological record shall normally be disclosed to the individual to whom it pertains. However, and consistent with 5 U.S.C. 552a(f)(3) of the Privacy Act, if in the judgment of an authorized Agency physician, the release of such information could have an adverse effect on the individual, the individual shall be advised that it is in his best interest to receive the records through a physician of the requester's choice or, in the case of psychological records, through a licensed Psychiatrist or licensed Clinical Psychologist of the requester's choice. NSA/CSS may require certification that the individual is licensed to practice the appropriate specialty. Although the requester shall pay any fees charged by the physician or psychologist, NSA/CSS encourages individuals to take advantage of receiving their records through this means. If, however, the individual wishes to waive receiving the records through this means, the records shall be sent directly to the individual.

(10) Recipients of requests from NSA/CSS employees and affiliates for access to records within the confines of the NSA/CSS campus shall acknowledge the request within 10 working days of receipt, and access should be provided within 20 working days. If, for good cause, access cannot be provided within that time, the requester shall be advised in writing as to the reason and shall be given a date by which it is expected that access can be provided. If an office denies a request for access to a record, or any portion thereof, it shall notify the requester of its refusal and the reasons for it and shall advise the individual of the procedures for requesting a review of the circumstances by the Director of Policy. If the Director of Policy denies a request for access to a record or any portion thereof, the requester shall be notified of the refusal and the reasons the information was denied. The Director of Policy shall also advise the requester of the procedure for appealing to the NSA/CSS Privacy Act Appeal Authority. (*See* paragraph (e) of this section).

(11) Although classified portions of NSA/CSS records are exempt from disclosure pursuant to exemption (k)(1) of the Privacy Act and exemption (b)(1) of the FOIA, NSA, in its sole discretion, may choose to provide an NSA affiliate access to the classified portions of records about the affiliate if the affiliate possesses the requisite security clearance, special access approvals, and appropriate need-to-know for the classified information at issue. Classified records may only be accessed by fully cleared personnel in NSA/CSS spaces. Disclosure of classified records under this provision shall not operate as a waiver of PA exemption (k)(1), FOIA exemption (b)(1), or of any other exemption or privilege that would otherwise authorize the Agency to withhold the classified records from disclosure. NSA's determination regarding an affiliate's need-to-know is not subject to appeal under this or any other authority. All copies of classified records made available to an NSA affiliate under the procedures of this Part shall carry the following statement: ''This classified material is provided to you under the provisions of the Privacy Act of 1974. Furnishing you this material does not relieve you of your obligations under the laws of the United States (*See*, *e.g.*, section 798 of Title 18, U.S. Code) to protect classified information. You may retain this material under proper protection as specified in the NSA/CSS Classification Manual; you may not remove it from NSA/CSS facilities.''

(12) The procedures described in this part do not entitle an individual to have access to any information compiled in reasonable anticipation of a civil action or proceeding, nor do they require that a record be created.

(13) Requesting or obtaining access to records under false pretenses is a violation of the Privacy Act and is subject to criminal penalties.

(e) Appeal of Denial of an Adverse Determination: (1) Any individual advised of an adverse determination shall be notified of the right to appeal

the initial decision within 60 calendar days of the date of the response letter and that the appeal must be addressed to the NSA/CSS FOIA/PA Appeal Authority, National Security Agency, 9800 Savage Road, Suite 6248, Fort George G. Meade, MD 20755–6248. The following actions are considered adverse determinations:

(i) Denial of records or portions of records.

(ii) Inability of NSA/CSS to locate responsive records.

(iii) Denial of a request for expeditious treatment.

(iv) Non-agreement regarding completion date of request.

(v) The appeal shall reference the initial denial of access and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes the appeal should be granted.

(2) The GC or his/her designee shall process appeals and make a recommendation to the Appeal Authority:

(i) Upon receipt of an appeal regarding the denial of information or the inability of the Agency to locate records on an individual, the GC or his/her designee shall provide a legal review of the denial and/or the adequacy of the search for responsive material, and make other recommendations as appropriate.

(ii) If the Appeal Authority determines that additional information may be released, the information shall be made available to the requester within 20 working days from receipt of the appeal. The conditions for responding to an appeal for which expedited treatment is sought by the requester are the same as those for expedited treatment on the initial processing of a request.

(iii) If the Appeal Authority determines that the denial was proper, the requester must be advised 20 days after receipt of the appeal that the appeal is denied. The requester likewise shall be advised of the basis for the denial and the provisions for judicial review of the Agency's appellate determination.

(iv) If a new search for records is conducted and produces additional records, the additional material shall be forwarded to the Director of Policy, as the initial denial authority (IDA), for review. Following review, the Director of Policy shall return the material to the GC with its recommendation for release or withholding. The GC will provide a legal review of the material, and the Appeal Authority shall make the release determination. Upon denial or release of additional information, the Appeal Authority shall advise the requester that more material was located and that the IDA and the Appeal Authority each conducted an independent review of the documents. In the case of denial, the requester shall be advised of the basis of the denial and the right to seek judicial review of the Agency's action.

(v) When a requester appeals the absence of a response to a request within the statutory time limits, the GC shall process the absence of a response as it would denial of access to records. The Appeal authority shall advise the requester of the right to seek judicial review.

(vi) Appeals shall be processed using the same multi-track system as initial requests. If an appeal cannot be responded to within 20 days, the requirement to obtain an extension from the requester is the same as with initial requests. The time to respond to an appeal, however, may be extended by the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request. That is, if the initial request is processed within 20 days so that the extra 10 days of processing which an agency can negotiate with the requester are not used, the response to the appeal may be delayed for that 10 days (or any unused portion of the 10 days).

(f) Amendment of Records:

(1) Minor factual errors may be corrected without resort to the Privacy Act or the provisions of this part, provided the requester and record holder agree to that procedure. Whenever possible, a copy of the corrected record should be provided to the requester.

(2) Requests for substantive changes to include deletions, removal of records, and amendment of significant factual information, because the information is incorrect or incomplete, shall be processed under the Privacy Act and the provisions of this part. The PA amendment process is limited to correcting records that are not accurate (factually correct), relevant, timely or complete.

(3) The amendment process is not intended to replace other existing NSA/CSS Agency procedures such as those for registering grievances or appealing performance appraisal ratings. Also, since the amendment process is limited to correcting factual information, it may not be used to challenge official judgments, such as performance ratings, promotion potential, and performance appraisals as well as subjective judgments made by supervisors, which reflect his/her observations and evaluations.

(4) Requests for amendments must be in writing, include the individual's name, signature, a copy of the record under dispute or sufficient identifying particulars to permit timely retrieval of the affected record, a description of the information under dispute and evidence to support the amendment request. The mailing address for the FOIA/PA office is National Security Agency, ATTN: FOIA/PA Services (DC321), 9800 Savage Road, Suite 6248, Fort George G. Meade, MD 20755–6248. Individuals who have access to NSA/CSS spaces may send their request through the internal mail system to DC321.

(5) FOIA/PA Services (DC321) shall acknowledge the amendment request within 10 working days of receipt and respond within 30 working days. The organization/individual who originated the information under dispute shall be given 10 working days to comment. On receipt of a response, FOIA/PA Services (DC321) shall review all documentation and determine if the amendment request shall be granted. If FOIA/PA Services (DC321) agrees with the request, it shall notify the requester and the office holding the record. The latter shall promptly amend the record and notify all holders and recipients of the records of the correction. If the amendment request is denied, the requester shall be advised of the reasons for the denial and the procedures for filing an appeal.

(g) Appeal of Refusals To Amend Records

(1) If the Director of Policy, as the Initial Denial Authority, refuses to amend any part of a record it shall notify the requester of its refusal, the reasons for the denial and the procedures for requesting a review of the decision by the NSA/CSS Appeal Authority. The Appeal Authority shall render a final decision within 30 working days, except when circumstances necessitate an extension. If an extension is necessary, the requester shall be informed, in writing, of the reasons for the delay and of the approximate date on which the review is expected to be completed. If the NSA/CSS Appeal Authority determines that the record should be amended, the requester, FOIA/PA Services, and the office holding the record will be advised. The latter shall promptly amend the record and notify all recipients.

(2) If the NSA/CSS Privacy Act Appeal Authority denies any part of the request for amendment, the requester shall be advised of the reasons for denial, his or her right to file a concise statement of reasons for disputing the information contained in the record, and his or her right to seek judicial

review of the Agency's refusal to amend the record. Statements of disagreement and related notifications and summaries of the Agency's reasons for refusing to amend the record shall be processed in the manner prescribed by 32 CFR part 310.

(h) Disclosures and Accounting of Disclosures

(1) No record contained in a System of Records maintained within the Department of Defense shall be disclosed by any means of communication to any person, or to any agency outside the Department of Defense, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record will be:

(i) To those officials and employees of the Agency who have a need for the record in the performance of their duties and the use is compatible with the purpose for which the record is maintained.

(ii) Required to be disclosed under the Freedom of Information Act, as amended.

(iii) For a routine use as described in NSA/CSS systems of records notices. The DoD ''Blanket Routine Uses'' may also apply to NSA/CSS systems of records. (*See* Appendix C to 32 CFR part 310).

(iv) To the Bureau of the Census for the purpose of planning or carrying out a census or survey or related activity authorized by law.

(v) To a recipient who has provided the Department of Defense or the Agency with advance, adequate written assurance that:

(A) The record will be used solely as a statistical research or reporting record;

(B) The record is to be transferred in a form that is not individually identifiable (*i.e.*, the identity of the individual cannot be determined by combining various statistical records); and

(C) The record will not be used to make any decisions about the rights, benefits, or entitlements of an individual.

(vi) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value. A record transferred to a Federal records center for safekeeping or storage does not fall within this category since Federal records center personnel act on behalf of the Department of Defense in this instance and the records remain under the control of the NSA/CSS. No disclosure accounting record of the transfer of records to Federal records center need be maintained.

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the NSA/CSS specifying the particular portion and the law enforcement activity for which the record is sought. Blanket requests for all records pertaining to an individual will not be accepted. A record may also be disclosed to a law enforcement agency at the initiative of the NSA/CSS when criminal conduct is suspected, provided that such disclosure has been established in advance as a ''routine use.''

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of the individual to whom the record pertains.

(ix) To Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee. This does not authorize the disclosure of any record subject to this part to members of Congress acting in their individual capacities or on behalf of their constituents, unless the individual consents.

(x) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office.

(xi) Pursuant to an order of a court of competent jurisdiction.

(A) When a record is disclosed under compulsory legal process and when the issuance of that order or subpoena is made public by the court that issued it, efforts shall be made to notify the individual to whom the record pertains. This may be accomplished by notifying the individual by mail at his most recent address as contained in the Component's records.

(B) Upon being served with an order to disclose a record, the General Counsel shall endeavor to determine whether the issuance of the order is a matter of public record and, if it is not, seek to be advised when it becomes public. An accounting of the disclosure shall be made at the time the NSA/CSS complies with the order or subpoena.

(xii) To a consumer reporting agency in accordance with section 3711(f) of Title 31.

(2) Except for disclosures made in accordance with paragraphs (h)(1)(i) and (ii) of this section, an accurate accounting of disclosures shall be kept by the record holder in consultation with the Privacy Act Coordinator.

(i) The accounting shall include the date, nature, and purpose of each disclosure of a record to any person or to another agency; and the name and address of the person or agency to whom the disclosure is made. There need not be a notation on a single document of every disclosure of a particular record, provided the record holder can construct from its System the required accounting information:

(A) When required by the individual;

(B) When necessary to inform previous recipients of any amended records, or

(C) When providing a cross reference to the justification or basis upon which the disclosure was made (including any written documentation as required in the case of the release of records for statistical or law enforcement purposes).

(ii) The accounting shall be retained for at least five years after the last disclosure, or for the life of the record, whichever is longer. No record of the disclosure of this accounting need be maintained.

(iii) Except for disclosures made under paragraph (h)(1)(vii) of this section, the accounting of disclosures shall be made available to the individual to whom the record pertains. The individual shall submit a Privacy Act Information Request form to the Privacy Act Coordinator in the office keeping the accounting of disclosures.

(3) Disclosures made under circumstances not delineated in paragraphs (h)(1)(i) through (xii) of this section shall only be made after written permission of the individual involved has been obtained. Written permission shall be recorded on or appended to the document transmitting the personal information to the other agency, in which case no separate accounting of the disclosure need be made. Written permission is required in each separate case; *i.e.*, once obtained, written permission for one case does not constitute blanket permission for other disclosures.

(4) An individual's name and address may not be sold or rented unless such action is specifically authorized by law. This provision shall not be construed to require withholding of names and addresses otherwise permitted to be made public. Lists or compilations of names and home addresses, or single

home addresses will not be disclosed, without the consent of the individual involved, to the public, including, but not limited to individual Congressmen, creditors, and commercial and financial institutions. Requests for home addresses may be referred to the last known address of the individual for reply at his discretion and the requester will be notified accordingly.

§ 322.6 Establishing exemptions.

(a) Neither general nor specific exemptions are established automatically for any system of records. The head of the DoD Component maintaining the system of records must make a determination whether the system is one for which an exemption properly may be claimed and then propose and establish an exemption rule for the system. No system of records within the Department of Defense shall be considered exempted until the head of the Component has approved the exemption and an exemption rule has been published as a final rule in the **Federal Register**.

(b) No system of records within NSA/CSS shall be considered exempt under subsection (j) or (k) of the Privacy Act until the exemption rule for the system of records has been published as a final rule in the **Federal Register**.

(c) An individual is not entitled to have access to any information compiled in reasonable anticipation of a civil action or proceeding (5 U.S.C. 552a(d)(5)).

(d) Proposals to exempt a system of records will be forwarded to the Defense Privacy Office, consistent with the requirements of 32 CFR part 310, for review and action.

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

(f) Do not use an exemption to deny an individual access to any record to which he or she would have access under the Freedom of Information Act (5 U.S.C. 552).

(g) Disclosure of records pertaining to personnel, or the functions and activities of the National Security Agency shall be prohibited to the extent authorized by Pub. L. No. 86–36 (1959) and 10 U.S.C. 424.

(h) Exemptions NSA/CSS may claim.

(1) *General exemption.* The general exemption established by 5 U.S.C. 552a(j)(2) may be claimed to protect investigative records created and maintained by law enforcement activities of the NSA.

(2) *Specific exemptions.* The specific exemptions permit certain categories of records to be exempt from certain specific provisions of the Privacy Act.

(i) *(k)(1) exemption.* Information properly classified under Executive Order 12958 and that is required by Executive Order to be kept secret in the interest of national defense or foreign policy.

(ii) *(k)(2) exemption.* Investigatory information compiled for law-enforcement purposes by non-law enforcement activities and which is not within the scope of Sec. 310.51(a). If an individual is denied any right, privilege or benefit that he or she is otherwise entitled by federal law or for which he or she would otherwise be eligible as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This subsection when claimed allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(iii) *(k)(3) exemption.* Records maintained in connection with providing protective services to the President and other individuals identified under 18 U.S.C. 3506.

(iv) *(k)(4) exemption.* Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8.

(v) *(k)(5) exemption.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. This provision allows protection of confidential sources used in background investigations, employment inquiries, and similar inquiries that are for personnel screening to determine suitability, eligibility, or qualifications.

(vi) *(k)(6) exemption.* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process.

(vii) *(k)(7) exemption.* Evaluation material used to determine potential for promotion in the Military Services, but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

§ 322.7 Exempt systems of records.

(a) All systems of records maintained by the NSA/CSS and its components shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and that is required by Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein, which contain isolated items of properly classified information.

(b) GNSA 01

(1) *System name:* Access, Authority and Release of Information File.

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

(ii) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(3) **Authority:** 5 U.S.C. 552a(k)(5).

(4) *Reasons:* (i) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential sources to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the

Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

(c) GNSA 02

(1) *System name:* Applicants.

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

(ii) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(3) **Authority:** 5 U.S.C. 552a(k)(5).

(4) *Reasons:* (i) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

(d) GNSA 03

(1) *System name:* Correspondence, Cases, Complaints, Visitors, Requests.

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

(ii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

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

(iv) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) **Authority:** 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

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

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

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

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

(e) GNSA 04

(1) *System name:* Military Reserve Personnel Data Base.

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

(ii) Therefore, portions of this system may be exempt pursuant to 5 U.S.C.

552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(3) **Authority:** 5 U.S.C. 552a(k)(5).

(4) *Reasons:* (i) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential sources to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

(f) GNSA 05

(1) *System name:* Equal Employment Opportunity Data.

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

(ii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(iii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2) and (k)(4) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) **Authority:** 5 U.S.C. 552a(k)(2) and (k)(4).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

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

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

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

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

(g) GNSA 06

(1) *System name:* Health, Medical and Safety Files.

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

(ii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) and (k)(6) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) **Authority:** 5 U.S.C. 552a(k)(5) and (k)(6).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

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

(iii) From subsection (e)(1) because it is not always possible to detect the

relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

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

(h) GNSA 08

(1) *System name:* Payroll and Claims.

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

(ii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

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

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

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

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

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

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

(i) GNSA 09

(1) *System name:* Personnel File.

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

(ii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) and (k)(6) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) **Authority:** 5 U.S.C. 552a(k)(5) and (k)(6).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

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

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

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

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

such a notice in broad generic terms, as is its current practice.

(j) GNSA 10

(1) *System name:* Personnel Security File.

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

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

(iii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iv) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(5), and (k)(6) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) **Authority:** 5 U.S.C. 552a(k)(2), (k)(5), and (k)(6).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

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

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

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

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

(k) GNSA 12

(1) *System name:* Training.

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

(ii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) and (k)(6) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) **Authority:** 5 U.S.C. 552a(k)(5), and (k)(6).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

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

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

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

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

(l) GNSA 13

(1) *System name:* Archival Records.

(2) *Exemption:* (i) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(ii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(4) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) **Authority:** 5 U.S.C. 552a(k)(4).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

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

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

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

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

(m) GNSA 14

(1) *System name:* Library Patron File Control System.

(2) *Exemption:* (i) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(ii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(4) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) **Authority:** 5 U.S.C. 552a(k)(4).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

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

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

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

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

(n) GNSA 15

(1) *System name:* Computer Users Control System.

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

(ii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

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

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act

would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

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

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

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

(o) GNSA 17

(1) *System name:* Employee Assistance Service (EAS) Case Record System.

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

(ii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

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

(iv) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) **Authority:** 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

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

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

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

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

(p) GNSA 18

(1) *System name:* Operations Files.

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

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

(iii) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

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

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those

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

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

(iv) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments and corrections to the information in the system.

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

Dated: May 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12970 Filed 5–23–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–023]

Drawbridge Operation Regulations; Berwick Bay, Morgan City, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Burlington Northern Railway Vertical Lift Span Railroad Bridge across Berwick Bay, mile 17.5, at Morgan City, St. Mary Parish, Louisiana. This deviation provides a four-hour bridge closure to navigation, Monday through Thursday from June 16, 2003 through July 10, 2003. The deviation is necessary to conduct scheduled maintenance to the railroad on the drawbridge.

DATES: This deviation is effective from 8 a.m. on Monday, June 16, 2003 until noon on Thursday, July 10, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Burlington Northern Railway Company has requested a temporary deviation in order to remove and replace all of the crossties on the lift span of the bridge across Berwick Bay, mile 17.5, at Morgan City, St. Mary Parish, Louisiana. This maintenance is essential for the continued safe operation of the railroad bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 8 a.m. until noon, Monday through Thursday from June 16, 2003 through July 10, 2003.

The vertical lift span bridge has a vertical clearance of 4 feet above National Geodetic Vertical Datum (NGVD) in the closed-to-navigation position and 73 feet above NGVD in the open-to-navigation position. Navigation at the site of the bridge consists of tugs with tows transporting petroleum products, chemicals and construction equipment, commercial fishing vessels, oil industry related work boats and crew boats and some recreational craft. Since the lift span of the bridge will only be closed to navigation four hours per day, four days per week, ample time will be allowed for commercial and recreational vessels to schedule transits. Accordingly, it has been determined that this closure will not have a significant effect on vessel traffic. The bridge normally remains in the open-to-navigation position until a train enters the signal block, requiring it to close. An average number of openings for the passage of vessels is, therefore, not available. In accordance with 33 CFR 117.5, the draw of the bridge shall open on signal at all times. The bridge will not be able to open for emergencies during the closure periods because the weight disparity imposed by the presence of maintenance equipment on the lift span will not allow for its safe operation. The Intracoastal Waterway—Morgan City to Port Allen Landside Route is an alternate route for vessels with less than a 12-foot draft.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 16, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–13058 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–022]

Drawbridge Operation Regulations; Back Bay of Biloxi, Biloxi, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Popps Ferry Bascule Span Highway Bridge across the Back Bay of Biloxi, mile 8.0,

at Biloxi, Harrison County, MS. This deviation allows the bridge to remain closed to navigation on June 5, 2003. The deviation is necessary to conduct emergency repairs to the drawbridge.

DATES: This deviation is effective from 8:30 a.m. through 5:30 p.m. on June 5, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Kay Wade, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The City of Biloxi has requested a temporary deviation in order to replace the hydraulic fluid in the hydraulic system of the bascule span bridge across the Back Bay of Biloxi at mile 8.0 at Biloxi, Harrison County, Mississippi. This maintenance is necessary to replace contaminated hydraulic fluid which is damaging the bridge's hydraulic system. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 8:30 a.m. through 5:30 p.m. on Thursday, June 5, 2003.

The bascule span bridge has a vertical clearance of 25 feet above mean high water, elevation +0.8 feet Mean Sea Level and 26.6 feet above mean low water, elevation −0.8 Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of tows with barges and very little recreational craft. Due to prior experience, as well as coordination with waterway users, it has been determined that this one day closure will not have a significant effect on these vessels. The bridge normally opens to pass navigation an average of 125 times per month. In accordance with 33 CFR 117.675(c), the draw of the Popps Ferry Road bridge, mile 8.0, at Biloxi, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for passage of vessels. The draw shall open at any time for a vessel in distress. The bridge will not be able to open for emergencies during the closure period. Alternate routes are not available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 14, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–13059 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–042]

Drawbridge Operation Regulations: Fore River, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Casco Bay Bridge, mile 1.5, across the Fore River between Portland and South Portland, Maine. Under this temporary deviation a three-hour advance notice for bridge openings will be required from 6 a.m. to 6 p.m., June 2, 2003 through June 6, 2003. This temporary deviation is necessary to facilitate fender repairs at the bridge.

DATES: This deviation is effective from June 2, 2003 through June 6, 2003.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Casco Bay Bridge has a vertical clearance in the closed position of 55 feet at mean high water and 64 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.5.

The bridge owner, Maine Department of Transportation, requested a temporary deviation from the drawbridge operation regulations to facilitate fender repairs at the bridge.

Under this temporary deviation a three-hour advance notice will be required for bridge openings from 6 a.m. through 6 p.m., June 2, 2003 through June 6, 2003. Vessels that can pass under the bridge without a bridge opening may do so at all times.

The Coast Guard coordinated this closure with the mariners who normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: May 14, 2003.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 03–13060 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 6

Amendment to Bylaws of the Board of Governors

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On March 31, 2003, the Board of Governors of the United States Postal Service adopted a revision to its bylaws. The purpose of this revision was to provide that the Board may, by a recorded vote, vary the time or place of a regular or annual meeting. This final rule incorporates the change which the Board adopted.

EFFECTIVE DATE: March 31, 2003.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, (202) 268–4800.

SUPPLEMENTARY INFORMATION: This document publishes a revision. The change revises 39 CFR 6.1 of the Bylaws of the Board of Governors of the United States Postal Service. The change was adopted by the Board on March 31, 2003.

The change now requires that consistent with the provisions of § 7.5 of the bylaws, the time or place of a regular or annual meeting may be varied by a recorded vote. Previously, the bylaws required a unanimous vote to vary the time or place of a regular or annual meeting.

List of Subjects in 39 CFR Part 6

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

■ Accordingly, § 6.1 of title 39 CFR is amended to read as follows:

PART 6—MEETING (ARTICLE VI)

■ 1. The authority citation for Part 6 continues to read as follows:

Authority: 39 U.S.C. 202, 205, 401(2), (10), 1003, 3013; 5 U.S.C. 552b(e), (g).

■ 2. Section 6.1 is revised to read as follows:

§ 6.1 Regular meetings, annual meeting.

The Board shall meet regularly each month and shall meet normally on the first Monday and Tuesday of each month. The first regular meeting of each calendar year is designated as the annual meeting. Consistent with the provisions of § 7.5 of these bylaws, the time or place of a regular or annual meeting may be varied by recorded vote, with the earliest practicable notice to the Secretary. The Secretary shall distribute to the members an agenda setting forth the proposed subject matter for any regular or annual meeting in advance of the meeting.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–13098 Filed 5–23–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[WV60–6027a; FRL–7503–2]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; State of West Virginia; Control of Emissions From Existing Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the section 111(d)/129 negative declaration submitted by the West Virginia Department of Environmental Protection, Division of Air Quality (DAQ). The negative declaration certifies that small municipal waste combustion (MWC) units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within its air pollution control jurisdiction.

DATES: This final rule is effective July 28, 2003, unless EPA receives adverse written comment by June 26, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*.

SUPPLEMENTARY INFORMATION: Sections 111(d) and 129 of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor 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. However, section 129 of the CAA, also requires EPA to promulgate EG for small MWC units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 6, 2000 (65 FR 76350 and 76378), EPA promulgated small municipal waste combustion unit new source performance standards, 40 CFR part 60, subparts AAAA, and emission guidelines (EG), subpart BBBB, respectively.

The designated facility to which the EG apply is each existing small MWC unit that has a design combustion capacity of 35 to 250 tons per day of municipal solid waste (MSW) and commenced construction on or before August 30, 1999.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Also, 40 CFR parts 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (*i.e.*, negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d)/129 plan.

Final EPA Action

The DAQ has determined that there are no designated facilities, subject to the small MWC unit EG requirements, in its air pollution control jurisdiction. Accordingly, the DAQ has submitted to EPA a negative declaration letter certifying this fact. The submittal date of the letter is July 3, 2001.

Therefore, EPA is amending part 62 to reflect the receipt of the negative declaration letter from the DAQ. Amendments are being made to 40 CFR part 62, subpart XX (West Virginia).

After publication of this **Federal Register** notice, if a small MWC facility is later found within jurisdiction of the DAQ, then the overlooked facility will become subject to the requirements of the Federal small MWC 111(d)/129 plan, including the compliance schedule, as promulgated on January 31, 2003 (68 FR 5144). The Federal plan would no longer apply if EPA subsequently receives and approves a 111(d)/129 plan from the DAQ.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies under 40 CFR parts 60 and 62. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the negative declaration should relevant adverse or critical comments be filed. This rule will be effective July 28, 2003, without further notice unless the Agency receives relevant adverse comments by June 26, 2003. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 111(d)/129 plan 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 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the section 111(d)/129 negative declaration submitted by the West Virginia Department of Environmental Protection, Division of Air Quality, 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, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: April 30, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 62, subpart XX, 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 XX—West Virginia

■ 2. Subpart XX is amended by adding an undesignated center heading and § 62.12160 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.12160 Identification of plan—negative declaration.

Letter from the West Virginia Department of Environmental Protection, Division of Air Quality, submitted July 3, 2001, certifying that there are no existing small municipal waste combustion units within the State of West Virginia that are subject to 40 CFR part 60, subpart BBBB.

[FR Doc. 03–13176 Filed 5–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0040, FRL–7461–4]

RIN 2060–A174

National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for engine test cells/stands. We have identified engine test cells/stands as major sources of hazardous air pollutants (HAP) such as toluene, benzene, mixed xylenes, and 1,3-butadiene. The final NESHAP will implement section 112(d) of the Clean Air Act (CAA), which requires all major sources of HAP to meet emission standards reflecting the application of the maximum achievable control technology (MACT). The final NESHAP will protect public health by reducing exposure to air pollution.

EFFECTIVE DATE: The final rule is effective May 27, 2003. The incorporation by reference of certain publications listed in today's final rule is approved by the Director of the Office of the Federal Register as of May 27, 2003.

ADDRESSES: Docket No. OAR–2002–0040 contains supporting documentation used in developing the final rule. The docket is located at the Air and Radiation Docket and Information Center in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagán, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–5340; facsimile number (919) 541–0942; electronic mail (e-mail) address *pagan.jaime@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Subcategories and entities potentially regulated by this action include those listed in Table 1 of this preamble. In general, engine test cells/stands are covered under the Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS) codes listed in Table 1 of this preamble. However, cells/stands classified under other SIC or NAICS codes may be subject to the final standards if they meet the applicability criteria. Not all cells/stands classified under the SIC and NAICS codes in Table 1 of this preamble will be subject to the final standards because some of the classifications cover products outside the scope of the final NESHAP for engine test cells/stands.

TABLE 1.—SUBCATEGORIES POTENTIALLY REGULATED BY THE NESHAP FOR ENGINE TEST CELLS/STANDS

Test cells/stands used for testing	SIC codes	NAICS codes
Internal Combustion Engines with rated power of 25 horsepower (hp) (19 kilowatts [kW]) or more.	3531, 3519, 3523, 3559, 3599, 3621, 3711, 3714, 4226, 4512, 5541, 7538, 7539, 8299, 8711, 8731, 8734, 8741.	333120, 333618, 333111, 333319, 335312, 336111, 336120, 336112, 336992, 336312, 336350, 481111, 811111, 811118, 611692, 54171, 541380.
Internal Combustion Engines with rated power of less than 25 hp (19 kW).	3519, 3621, 3524, 8734	333618, 336399, 335312, 332212, 333112, 541380.
Combustion Turbine Engines	3511, 3566, 3721, 3724, 4512, 4581, 7699, 9661.	333611, 333612, 336411, 336412, 481111, 488190, 811310, 811411, 92711.
Rocket Engines	3724, 3761, 3764, 9661, 9711	336412, 336414, 336415, 54171, 92711, 92811

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your engine test cell/stand is regulated by this action, you should examine the applicability criteria in § 63.9285 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Docket (E-Docket). The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0040. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search'' and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information and other information whose disclosure is restricted by statute, which are not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's document also will be available on the WWW. Following the Administrator's signature, a copy of this action will be posted at *http://www.epa.gov/ttn/oarpg* on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 28, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce the requirements.

Outline. The information presented in this preamble is organized as follows:

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I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Engine test facilities were listed as a source category under the fuel combustion industry group, and rocket engine test firing was listed as a source category under the miscellaneous processes industry group in the **Federal Register** on July 16, 1992 (57 FR 31576). These two source categories were combined and renamed engine test cells/stands in the **Federal Register** on May 14, 2002 (67 FR 34547). Major sources of HAP are those that have the potential to emit greater than 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP.

B. What Criteria Did We Use in the Development of the NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better controlled and lower emitting sources in each source category or subcategory. For new sources, the MACT standards cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in the category or subcategory (or the best performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

II. What Changes and Clarifications Have We Made to the Proposed Standards?

In response to the public comments received on the proposed standards, we made several changes in developing the final rule. Some of the comments and our responses and rule changes are summarized in the following sections. The complete summary of comments and responses can be found in the Response to Comments document, which is available from several sources (*see* **SUPPLEMENTARY INFORMATION** section).

A. Applicability

The final rule applies to an owner or operator of engine test cells/stands located at major sources of HAP emissions. An engine test cell/stand is any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines. Because the proposed rule did not include a definition of uninstalled engine, many commenters requested clarification of uninstalled engine versus installed engine testing in regards to determining applicability of the final rule.

The final rule clarifies this applicability issue. The final rule regulates the testing of engines, not the testing of any final product (*e.g.*, automobile, boat, power generator, etc.). If the engine being tested in a test cell/stand is not installed in, or an integrated part of, the final product, then the test cell/stand is considered part of the affected source.

This new clarification for uninstalled also clarifies the applicability of testing outboard motors. One of the comments specifically stated that outboard motors operated while detached from a boat should not be considered uninstalled, since ''the engine remains coupled to lower unit gear drive and propeller without modification to its vessel-installed configuration.''

In the final rule, outboard motors are considered installed when the engine is coupled with the gear drive and propeller. Therefore, a facility with engine testing involving outboard motors, in their vessel-installed configuration, is not an affected source.

Another comment stated that large diesel engines used in locomotives must drive a load in order to be accurately tested. The facility captures the work produced by the engine by driving a generator to provide the load and utilizes the electric power. The commenter wanted to assure that this type of engine testing situation also would not fall into a source category pertaining to power production. We agree with the comment and clarify that the only applicable source category for engine test cells/stands that utilize incidentally produced power is the Engine Test Cells/Stands NESHAP.

Two other comments prompted specific applicability exclusions. One comment from the petroleum refinery industry stated that the engine test cells/stands NESHAP should not apply to petroleum refinery industry sources using knock engine testing. Because knock engines and other devices used for testing fuels and lubricants at refineries do not test the engine per se but instead test the fuels and lubricants for product quality and development purposes, these engines are not covered. The final rule specifically excludes test cells that are operated to test or evaluate fuels (such as knock engines), transmissions, electronics, etc.

Another comment involved universities with aviation programs using engine test stands for education purposes. The final rule specifically excludes research and teaching activities at major source facilities that are not engaged in the development of

engines or engine test services for commercial purposes.

B. Affected Source

There were several comments requesting that the definition of affected source be revised to include all engine test cells/stands located at a major source. One commenter added that test cells/stands are typically grouped within a common building, often sharing common manifolds.

The proposed rule defined the affected source as any existing, new, or reconstructed engine test cell/stand used for testing uninstalled stationary or uninstalled mobile (motive) engines that is located at a major source of HAP emissions.

The final rule includes a revised definition of affected source in accordance with the rationale in the amended General Provisions (67 FR 16582): ''A broader definition of affected source permits emission requirements to apply to a larger group of processes, activities and equipment, and may thereby facilitate more innovative and economically efficient control strategies.'' (67 FR 16588). The final rule defines an affected source as the collection of all equipment and activities associated with engine test cells/stands used for testing uninstalled stationary or uninstalled mobile (motive) engines located at a major source of HAP emissions.

C. Compliance Dates

Three commenters noted a discrepancy between the language in the proposed preamble and the proposed rule concerning the compliance date.

An inadvertent error in the proposal preamble language was made. The proposal regulatory text was correct. The final rule clarifies the compliance date for existing sources as 3 years after the effective (promulgation) date, and the compliance date for new sources as the effective date or upon startup, whichever is later.

D. Reconstruction

One commenter specifically stated that movement or relocation of portable test stands within a facility should not be considered reconstruction. We do not consider movement or relocation of portable test stands (or related equipment) within a facility to be reconstruction. The revised definition of affected source in the final rule also addresses this issue.

Three commenters had ideas for specific activities to exclude from a reconstruction determination. Two commenters recommended that EPA include a modified definition of reconstruction in the final rule that would add to the General Provisions definition in 40 CFR 63.2 an exclusion for the cost of replacement or modification of components required to demonstrate compliance with EPA's emission regulations contained in 40 CFR parts 89, 90, and 91. The commenter stated that manufacturers may be forced by regulation to invest in new equipment for test cells and fall under the definition of reconstruction in order to comply with new EPA engine requirements, even though such improvements will not change the capacity or emissions from the cell. A specific definition of reconstruction needs to be applied to engine test cells that only counts costs incurred to increase capacity or if the modification results in increased HAP emissions. The commenter further stated that EPA has previously recognized this problem and adopted a reasonable approach in the final Large Municipal Waste Combustor rule (40 CFR 60.50a(f) and 60.50b(d)), and that the same reasoning could be applied to engine test cells. Another commenter specifically recommended that EPA exclude passive measurement and control instrumentation and electronics from inclusion in a reconstruction evaluation.

According to the recently amended General Provisions, the definition of affected source states, ''Reconstruction, unless otherwise defined in a relevant standard, means the replacement of components of an affected or previously nonaffected source to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the relevant standard(s) established by the Administrator (or a State) pursuant to section 112 of the CAA. Upon reconstruction, an affected source, or a stationary source that becomes an affected source, is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of HAP from that source.''

Because of the diversity of engine test cells/stands and test requirements used by the various types of engine manufacturers and industry sectors, it is difficult to define what types of test equipment and support equipment comprise a new affected source (*e.g.* actual engine test cell/stand) or reconstructed affected source. We cannot limit or define reconstruction to include only those changes that will increase capacity or HAP emissions associated with the engine test cell/stand because there is no way of knowing how the engine test cell/stand will be used in the future. However, we do not consider equipment reconfiguration to be reconstruction.

The regulations for Large Municipal Waste Combustors in 40 CFR 60.50a(f) and 60.50b(d) establish that physical or operational changes made to an existing unit primarily for the purpose of complying with emission guidelines under subpart Cb are not considered a modification or reconstruction. We recognize the precedent set by these provisions with respect to the exclusion of costs for required regulatory modifications to comply with other EPA regulations. We have reviewed the regulatory language in these regulations and conclude that it is appropriate to provide a similar level of flexibility to engine test cells/stands. In response to these comments, the final rule includes new language clarifying that changes made to an existing affected source primarily for the purpose of complying with revisions to engine testing requirements under 40 CFR parts 80, 86, 89, 90, 91, or 92 are not considered a modification or reconstruction. We agree with the commenter that it is appropriate to exclude existing engine test cells that are modified to meet revisions under Title 40 provisions. We believe that it is unnecessary to require these existing test cells to install emission control devices when modifications are due to changes to the federal mobile source regulations and since those improvements will not increase the capacity or the emissions from the test cell/stand. Therefore, those affected sources modified to meet revisions to requirements in those parts and subparts will not be subject to new source MACT.

The final rule also includes language that excludes passive measurement and control instrumentation and electronics from the reconstruction evaluation.

E. New Source MACT

Several commenters stated the proposed new source emissions limits (99.9 percent carbon monoxide (CO) emission reduction or 5 parts per million by volume CO outlet concentration) were too stringent or not attainable. The commenters further stated that the limits should reflect real world applications.

In the proposed rule, EPA used the best information available at the time to determine MACT for both new and existing sources. The EPA reviewed the additional test data submitted during

the comment period, as well as the various comments describing test conditions that are significantly different from those used in previously submitted test reports. The EPA also evaluated other rules requiring similar combustion control equipment. The Paper and Other Web Coating NESHAP, subpart JJJJ, has an option of meeting overall emissions reductions of 98 percent. This destruction efficiency achieved through thermal oxidation was generally accepted as the ''level of control achievable on a continuous basis under all normal operating conditions applicable to new sources.'' Therefore, for that particular source category (which involves coatings and cleaning solvents), EPA determined that thermal oxidation was the best control technology and justified setting the emission limits for thermal oxidizers at 98 percent control efficiency or, alternatively, achieving an outlet concentration of 20 parts per million or less.

With this control technology limit in mind, EPA compared the two source categories for similarities and/or differences that could lead to a comparable level of destruction efficiency for engine test cells/stands. Coating operations covered by the Paper and Other Web Coating NESHAP contain large concentrations of solvents that are easily removed through thermal oxidation. Engine testing by-products, on the other hand, are the result (by-products) of an incomplete combustion process, and HAP are typically emitted in significantly lower concentrations than surface coating and solvent cleaning emissions. As noted by the commenters, there are a variety of fuels and test conditions used at different sources for several types of engine tests. (A summary of the submitted test reports and emissions data is included in the docket.) In reviewing the test data submitted by the commenters, we found that even though some of the test reports showed very high destruction efficiencies for thermal oxidizers, the best controlled facilities were only being required to meet 95 percent or 96 percent control volatile organic compounds (VOC), based on their operating permit requirements. These levels of control take into consideration differences in operating conditions for engine test cells/stands. After reviewing the comments and information submitted, we conclude that a maximum control level of 96 percent is appropriate once we consider the differences in HAP emission levels from engines tested, the testing conditions, and also the need to account for measurement uncertainties. We also conclude that increased compliance flexibility will result from the use of total hydrocarbons (THC) (in addition to CO) for demonstrating compliance. Therefore, the new source emission limits have been changed in the final rule to 96 percent reduction for CO or THC based on the updated test data, additional test reports, and estimates reflecting the most prevalent engine test setups and conditions across all engine testing sectors involving engines greater than or equal to 25 horsepower (hp).

F. Monitoring Requirements

Several commenters requested that the continuous emissions monitoring systems (CEMS) requirements be eliminated or changed to parametric monitoring. The commenters stated that CEMS are too expensive and do not provide any meaningful environmental benefit to justify the capital costs to install them on engine test stands. They also pointed out that in other permitting decisions and guidance documents, EPA has determined that initial stack tests followed by monitoring of operating temperature is a proven and cost-effective way of monitoring oxidizer performance.

The EPA reviewed the monitoring requirements in the proposal and compared them with other similar emission sources. The HAP emitted by engine test cells are the result of byproducts of incomplete combustion. Thermal destruction of these HAP occurs at temperatures between 590 °C and 650 °C (1,100 °F and 1,200 °F), thus making temperature an appropriate parameter to monitor the destruction of HAP. In the case of monitoring a regenerative thermal oxidizer (RTO), the temperature is monitored during the initial performance test. After the RTO meets the performance test requirements and demonstrates compliance with the applicable emission limit, the operating temperature is continuously monitored to verify the performance of the RTO. As a result, we have concluded that parametric monitoring is adequate for ensuring compliance with the emission limit. Thus, we have changed the monitoring requirements in the final rule to allow parameter (temperature) monitoring for thermal oxidizers. Since some facilities may already have existing continuous monitoring equipment in place, CEMS are still included in the final rule as a monitoring option.

G. Cost and Economic Assumptions and Impacts

As a result of the changes to address public comments, the final rule includes a new estimation of cost impacts. The final rule estimates there will be 18 affected source facilities at a cost of $3.2 million and a HAP reduction of 65.5 tpy.

H. Startup, Shutdown, and Malfunction (SSM)

The proposed rule specifically required affected sources to comply with the applicable emission limitation at all times, including SSM of the engine test cells/stands. Many commenters disagreed with these provisions. One commenter requested an exclusion for the startup period during which a catalytic oxidizer comes up to operating temperature. The commenter also provided examples of issues involving oxidizer malfunctions: (1) Engines cannot be shut off instantaneously, and excess emissions can occur in the time that it takes to complete an orderly and safe shutdown; and (2) there are certain tests that must be redone at large cost if they are interrupted. An example piston scuff test was described by the commenter as taking about 90 minutes, and if the engine is shutdown, the engine must be rebuilt and the test rerun. In the case of an oxidizer malfunction when such a test is in progress, the commenter requested that the operator be able to complete the test without risk of enforcement action.

The majority of emissions from engine testing occur during the times that would be covered by SSM provisions. Therefore, to ensure that those emissions are controlled, the SSM provisions were excluded from the proposed rule. Because the SSM provisions apply to the process as well as the control equipment, the impact of the engine test NESHAP to minimize HAP emissions would be significantly reduced by adopting the SSM provisions.

Based on the comments, the final rule includes SSM provisions for any control equipment and monitoring equipment related to new or reconstructed affected source emissions. The new language references the General Provisions for SSM procedures related to control equipment. The time required for a catalytic oxidizer to come up to operating temperature is not covered by the SSM provisions because engine testing should not be conducted before the minimum operating temperature (determined during the initial performance test) is achieved.

I. Emissions Averaging

We asked for comments on including some type of averaging provisions, and several commenters recommended that

averaging provisions be included in the final rule. We looked at existing rules that include averaging provisions such as the Petroleum Refineries NESHAP (subpart CC), the Aluminum Reduction Plants NESHAP (subpart LL), and the Group IV Polymers and Resins NESHAP (subpart JJJ) and found that these rules allow averaging only between emission sources covered under each specific rule. In reviewing the comments and considering different averaging options, there were several issues that had to be taken into account. First, in all previous regulations that implemented an averaging scheme, only processes within the same source category were considered and accounted for in the averaging scheme. In other words, the concept of emissions averaging has always been considered and implemented within a given source category, and not across source categories. Second, only existing sources have been allowed to take part in this type of flexibility option. This decision not to allow new sources to average their emissions is consistent with the direction outlined in the statute where new sources are expected to reduce their emissions to a level equivalent to that of the best controlled similar source. Many facilities that operate engine test cells/stands also conduct other processes that emit HAP. However, these other processes, such as coating and cleaning, are not part of the engine test cells/stands source category and are already regulated under other NESHAP.

For these reasons, we concluded that averaging emissions is not an appropriate option for this source category. Therefore, the final rule includes no averaging provisions.

J. Miscellaneous

Some commenters recommended that the term engine test cell/stand be defined to clarify that a rotary test firing operation that holds numerous engines is considered a single engine test cell/stand. Changes to the definition of affected source in the final rule provides for the collection of all equipment and activities associated with engine test cells/stands, which would relieve the necessity for specific language regarding carousel testing setups.

It was also noted that the proposed regulation wording regarding the initial notification requirement for new or reconstructed engine test cells/stands used for testing internal combustion (IC) engines with a rated power of less than 25 hp (19 kilowatts (kW)) was unclear and confusing. Additional language was added to those sections of the final rule dealing with initial notifications to clarify those requirements. Any new or reconstructed source testing IC engines with a rated power less than 25 hp must submit an initial notification, but do not have to comply with any of the other final rule requirements.

III. What Are the Final Standards?

A. What Is the Source Category?

The final rule covers four subcategories of engine test cells/stands located at major source facilities: (1) Engine test cells/stands used for testing internal combustion engines with rated power of 25 hp (19 kW) or more, (2) engine test cells/stands used for testing internal combustion engines with rated power of less than 25 hp, (3) engine test cells/stands used for testing combustion turbine engines, and (4) engine test cells/stands used for testing rocket engines. The rated power criteria for distinguishing between the two internal combustion engine subcategories is based on the largest engine (in terms of rated power) that is tested in the engine test cell/stand.

B. What Is the Affected Source?

The final rule applies to each affected source, which is defined as the collection of all equipment and activities associated with engine test cells/stands used for testing uninstalled stationary or uninstalled mobile (motive) engines located at a major source of HAP emissions. An uninstalled engine is defined as an engine being tested in a test cell/stand that is not installed in, or an integrated part of, the final product. A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

Each new or reconstructed affected source used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more that is located at a major source of HAP emissions must comply with the requirements in the final rule. New or reconstructed affected sources used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) are not required to comply with the emission limitations in the final rule, but are required to submit an Initial Notification upon startup of the test cells/stands.

New or reconstructed affected sources used for testing combustion turbine engines or new or reconstructed test cells/stands used for testing rocket engines are not required to comply with the emission limitation or the recordkeeping or reporting requirements in the final rule.

Existing affected sources that are located at major sources of HAP emissions are not required to comply with the emission limitations or the recordkeeping or reporting requirements in the final rule.

The final rule also does not apply to engine test cells/stands that are located at area sources of HAP emissions. An area source is any source that is not a major source of HAP emissions.

C. What Are the Emission Limits?

As the owner or operator of a new or reconstructed affected source used in whole or in part for testing internal combustion engines with rated power of 25 hp (19 kW) or more and located at a major source of HAP emissions, you must comply with one of the following two emission limitations by May 27, 2003 or upon startup if you start up your affected source after May 27, 2003: (1) Reduce CO or THC emissions in the exhaust from the new or reconstructed affected source to 20 parts per million by volume dry basis (ppmvd) or less, at 15 percent oxygen (O_2) content, or (2) reduce CO or THC emissions in the exhaust from the new or reconstructed affected source by 96 percent or more. Existing affected sources used in whole or in part for testing internal combustion engines with rated power of 25 hp (19 kW) or more and located at a major source of HAP emissions are not required to comply with the emission limitations.

Finally, as mentioned earlier, new or reconstructed affected sources used for testing internal combustion engines with a rated power of less than 25 hp (19 kW), new or reconstructed affected sources used for testing combustion turbine engines, and new or reconstructed affected sources used for testing rocket engines are not required to comply with either emission limitation. In addition, neither existing affected sources located at major sources of HAP emissions nor new, reconstructed, or existing affected sources located at area sources of HAP emissions are required to comply with the emission limitations.

D. What Are the Initial Compliance Requirements?

The initial compliance requirements are different depending on whether you demonstrate compliance with the outlet concentration emission limitation or the percent reduction emission limitation. If you choose to comply with the outlet concentration emission limitation, you must conduct EPA Methods 3A and 10 of appendix A to 40 CFR part 60 for CO

measurement or EPA Method 25A of appendix A to 40 CFR part 60 for THC measurement. The final rule also provides for an alternate test method (ASTM D 6522–00) for testing engines that burn natural gas as fuel. You must demonstrate that the outlet concentration of CO or THC emissions from the new or reconstructed affected source or emission control device is 20 ppmvd or less, corrected to 15 percent O_2 content, using the first 4-hour rolling average after a successful performance evaluation.

If you comply with the percent reduction emission limitation, you must conduct an initial performance test to determine the capture and control efficiencies of the equipment and to establish operating limits to be achieved on a continuous basis. The performance test would have to be completed no later than 180 days after the compliance date for new or reconstructed affected sources. You must demonstrate that the reduction in CO or THC emissions is at least 96 percent using the first 4-hour rolling average after a successful performance evaluation. Your inlet and outlet measurements must be on a dry basis and corrected to 15 percent O_2 content.

If you use a capture system and add-on control device, you determine both the efficiency of the capture system and the emission reduction efficiency of the control device. To determine the capture efficiency, you either verify the presence of a potential to emit (PTE) using EPA Method 204 of 40 CFR part 51, appendix M, or use one of the protocols in 40 CFR 63.9320 of the final rule to measure capture efficiency. If you have a PTE and all engine testing occurs within the enclosure and you route all exhaust gases from the enclosure to a control device, then you assume 100 percent capture.

To determine the emission reduction efficiency of the control device, you conduct measurements of the inlet and outlet gas streams. The test would consist of three runs, each run lasting at least 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

- Method 1 or 1A for selection of the sampling sites;
- Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate;
- Method 3, 3A, or 3B for gas analysis to determine dry molecular weight;
- Method 4 to determine stack moisture; and
- Method 25 or 25A to determine organic volatile matter concentration. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator could be used.

E. What Are the Continuous Compliance Requirements?

Several general continuous compliance requirements apply to affected sources required to comply with the applicable emission limitation. You are required to comply with the applicable emission limitation at all times, except during SSM of any control equipment and associated monitoring equipment related to the new or reconstructed affected source emissions. You must operate and maintain your air pollution control equipment and monitoring equipment according to good air pollution control practices at all times. You must conduct monitoring at all times that the new or reconstructed affected source is in operation except during periods of malfunction of the monitoring equipment or necessary repairs and quality assurance or control activities, such as calibration drift checks.

For each new or reconstructed affected source operation on which you use a capture system and control device, the continuous parameter monitoring results for each month would affect your compliance determination. If the monitoring results indicate no deviations from the operating limits and there were no bypasses of the control device, you assume the capture system and control device are achieving the same percent emission reduction efficiency as during the most recent performance test in which compliance was demonstrated. If there are any deviations from the operating limits during the month or any bypasses of the control device, you account for them in the calculation of the monthly emissions by assuming the capture system and control device were achieving zero emission reduction during the periods of deviation. Then, you determine the overall percent reduction of CO or THC emissions.

If you use an emission capture system and control device, the final rule would require you to achieve, on a continuous basis, the operating limits you establish during the performance test. If the continuous monitoring shows that the capture system and control device is operating outside the range of values established during the performance test, you have deviated from the established operating limits.

If you operate a capture system and control device that allow emissions to bypass the control device, you have to demonstrate that CO or THC emissions collected by the capture system are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following four monitoring procedures:

- Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;
- Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;
- Valve closure monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or
- Automatic shutdown system to stop the engine test cell/stand operation when flow is diverted from the control device.

If the bypass monitoring procedures indicate that emissions are not routed to the control device, you have deviated from the emission limits.

To demonstrate continuous compliance with either the percent reduction or outlet concentration emission limitation using continuous parameter monitoring systems, you must continuously monitor and record the appropriate parameter, depending on the control device used. The operating parameter must not drop below the level established by the performance test in order to maintain the reduction in CO or THC emissions at or above 96 percent, or 20 ppmvd or less, corrected to 15 percent O_2 content, based on a rolling 4-hour average, averaged every hour.

To demonstrate continuous compliance with the outlet concentration emission limitation using CEMS, you must calibrate and operate your CEMS according to the requirements in 40 CFR 63.8. You must continuously monitor and record the CO or THC and O_2 concentrations at the outlet of the engine test cell/stand or emission control device and calculate the CO or THC emission concentration for each hour. Then, the hourly CO or THC emission concentrations for each hour of the 4-hour compliance period are averaged together. The outlet CO or THC emission concentration must be 20 ppmvd or less, corrected to 15 percent O_2 content, based on the 4-hour rolling average, averaged every hour.

To demonstrate continuous compliance with the percent reduction emission limitation using CEMS, you must calibrate and operate your CEMS according to the requirements in 40 CFR 63.8. You must continuously monitor and record the CO or THC, and O_2 concentration before and after the emission control device and calculate the percent reduction in CO or THC emissions hourly. The reduction in CO

or THC emissions must be 96 percent or more, based on the 4-hour rolling average, averaged every hour.

For monitoring approaches using CEMS, you must also follow procedure 1 of 40 CFR part 60, appendix F, to verify that the CEMS is working properly over time.

F. What Are the Notification, Recordkeeping, and Reporting Requirements?

You must submit all applicable notifications listed in the NESHAP General Provisions (40 CFR part 63, subpart A), including an initial notification, notification of performance evaluation, and a notification of compliance status for each engine test cell/stand required to comply with the emission limitations.

You must submit an initial notification for each single or collection of new or reconstructed engine test cells/stands located at a major source of HAP emissions used for testing internal combustion engines with a rated power of less than 25 hp (19 kW).

You must record all of the data necessary to determine if you are in compliance with the applicable emission limitation. Your records must be in a form suitable and readily available for review. You must also keep each record for 5 years following the date of each occurrence, measurement, maintenance, report, or record. Records must remain on site for at least 2 years and then can be maintained off site for the remaining 3 years.

For each affected source, to comply with the applicable emission limitation you must submit a compliance report semiannually. This report must contain the company name and address, a statement by a responsible official that the report is accurate, a statement of compliance, or documentation of any deviation from the requirements of the final rule during the reporting period.

IV. What Are the Environmental, Energy, Cost, and Economic Impacts?

A. What Are the Air Impacts?

The final rule will reduce HAP emissions in the 5th year following promulgation by an estimated 59.5 megagrams per year (65.5 tpy).

B. What Are the Non-Air Health, Environmental, and Energy Impacts?

Assuming that new or reconstructed affected sources will be controlled by regenerative thermal oxidizers (RTO), secondary air and energy impacts would result from fuel combustion needed to operate these control devices.

The RTO require electricity and the combustion of natural gas to operate and maintain operating temperatures. By-products of fuel combustion required to generate electricity and maintain RTO operating temperature include emission of CO, nitrogen oxides (NO_X), sulfur dioxide (SO_2), and particulate matter less than 10 microns in diameter (PM_{10}). Assuming the electricity required for RTO operation is generated at coal-fired plants built since 1978 and using AP–42 emissions factors, generation of electricity required to operate RTO at an estimated 18 new facilities would result in the following increases in these air pollutants: CO, 3.45 tpy; NO_X, 8.15 tpy; SO_2, 4.15 tpy; and PM_{10}, 0.45 tpy.

Energy impacts include the consumption of electricity and natural gas needed to operate RTO. The estimated increase in electricity consumption from the operation of RTOs is 183,600 kilowatt-hour per year. Increased fuel energy consumption resulting from burning natural gas would be 1,790,000 million British thermal units per year. No significant secondary water or solid waste impacts would result from the operation of emission control devices.

There would also be a very small increase in fuel consumption expected resulting from back pressure caused by the emission control system.

C. What Are the Economic Impacts?

Based on the cost of compliance data provided above, the final rule is not expected to affect any of the existing sources in the industries that use engine test cells/stands, or test rocket engines. We estimate that 18 facilities will construct a total of 72 new engine test cells/stands at large engine research and development or production facilities in the next 5 years, requiring controls to be installed to comply with the final rule. Six of the estimated facilities (with 24 of the new engine test cells/stands) are anticipated to be built by auto, tractor, and diesel engine manufacturers, while 12 of the facilities (with 48 engine test cells/stands) are estimated to be built by military facilities. The total compliance cost to each facility, including control equipment and monitoring, inspection, recordkeeping and reporting costs, is estimated to be $179,000 per year (1999$). The auto, tractor, and diesel engine manufacturing firms that are expected to construct new engine test cells/stands are large multi-national firms; thus, the cost of compliance is insignificant in comparison to firm revenues. For example, the impact on each firm is less than 0.0004 percent of corporate revenues in 1999, or nearly zero in percentage terms. Likewise, the cost of compliance for military facilities that may be affected is insignificant when compared to facility operating budgets. Therefore, the economic impacts associated with the final rule are considered to be negligible.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive order. The Executive order defines ''significant regulatory action'' as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of Executive Order 12866, it has been determined that the final rule does not constitute a ''significant regulatory action'' because it does not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in the final rule are being submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1967.01), and a copy may be obtained from Susan Auby by mail at Office of Environmental Information, Collection Strategies Division (MD–2822T), 1200 Pennsylvania Avenue, NW., Washington DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded from the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping,

and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The final rule requires maintenance inspections of the control devices but does not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements involve only the specific information needed to determine compliance.

The monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 5 years after the effective date of the standards) is estimated to be 4,800 labor hours per year at a total annual cost of $221,000. This estimate includes a one-time (initial) control device performance evaluation, annualized capital monitoring equipment costs, semiannual compliance reports, maintenance inspections, notifications, and recordkeeping. Total annual costs associated with the new source control and monitoring requirements over the period of the ICR are estimated at $3.2 million.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor a collection of information, and a person is not required to respond to such a collection, unless the collection displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined as: (1) A small business whose parent company has either fewer than 500 employees if the business is involved in testing marine engines, or fewer than 1,000 employees if the business is involved in the testing of other types of engines (as defined by the Small Business Administration); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. Based on the Small Business Administration definitions, there are no small entities affected by this NESHAP. Pursuant to the provisions of 5 U.S.C. 605(b), we hereby certify that the NESHAP, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

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

The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any one year, nor does the final rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to the final rule.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, the requirements of section 6 of the Executive Order 13132 do not apply to the final rule.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (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.'' The final rule does not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the amendments. We know of one company that reported operating engine test cells/stands that are owned by an Indian tribal government. However, these test cells/stands are used for testing rocket engines. Although test cells/stands used for testing rocket engines are covered by the final rule, test cells/stands used for testing rocket engines are not required to meet any emission limitation, reporting, or recordkeeping requirements. Thus, Executive Order 13175 does not apply to the final rule.

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

Executive Order 13045 applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045, because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites the following standards in the final rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 10, 10B, 25, 25A, 204, 204B,C,D,E and Performance Specifications (PS) 3 and PS 4A. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods/performance specifications. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204B through 204F, and PS 3 and PS 4A. The search and review results have been documented and are placed in the docket (No. OAR–2002–0040) for the final rule.

Two voluntary consensus standards were identified as acceptable alternatives to the EPA methods specified in the final rule. The voluntary consensus standard ASTM D6522–00, Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers is cited in the final rule as an acceptable alternative to EPA Methods 3A and 10 for identifying carbon monoxide and oxygen concentrations for the final rule when the fuel is natural gas.

The voluntary consensus standard ANSI/ASME PTC 19.10–1981, Part 10 Flue and Exhaust Gas Analyses, is cited in the final rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ANSI/ASME PTC 19.10–1981 is an acceptable alternative to Method 3B.

In addition to the voluntary consensus standards EPA cites in the final rule, the search for emissions measurement procedures identified 13 other voluntary consensus standards. The EPA determined that 11 of these 13 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the final rule were impractical alternatives to EPA test methods/performance specifications for the purposes of the final rule. Therefore, the EPA does not intend to adopt these standards. The reasons for the determinations of these 11 methods are discussed below.

The voluntary consensus standard ASTM D3154–00, Standard Method for Average Velocity in a Duct (Pitot Tube Method), is impractical as an alternative to EPA Methods 1, 2, 2C, 3, 3B, and 4 for the purposes of the final rule since the standard appears to lack in quality control and quality assurance requirements. Specifically, ASTM D3154–00 does not include the following: (1) Proof that openings of standard pitot tube have not plugged during the test; (2) if differential pressure gauges other than inclined manometers (*e.g.*, magnehelic gauges) are used, their calibration must be checked after each test series; and (3) the frequency and validity range for calibration of the temperature sensors.

The voluntary consensus standard ASTM D3464–96 (2001), Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer, is impractical as an alternative to EPA Method 2 for the purposes of the final rule primarily because applicability specifications are not clearly defined, *e.g.*, range of gas composition, temperature limits. Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the standard limit EPA's ability to make a definitive comparison of the method in these areas.

The voluntary consensus standard ISO 10780:1994, Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts, is impractical as an alternative to EPA Method 2 in the final rule. The standard recommends the use of an L-shaped pitot, which historically has not been recommended by EPA. The EPA specifies the S-type design, which has large openings that are less likely to plug up with dust.

The voluntary consensus standard, CAN/CSA Z223.2–M86(1986), Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams, is unacceptable as a substitute for EPA Method 3A since it does not include quantitative

specifications for measurement system performance, most notably the calibration procedures and instrument performance characteristics. The instrument performance characteristics that are provided are nonmandatory and also do not provide the same level of quality assurance as the EPA methods. For example, the zero and span/calibration drift is only checked weekly, whereas the EPA methods requires drift checks after each run.

Two very similar standards, ASTM D5835–95, Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration, and ISO 10396:1993, Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations, are impractical alternatives to EPA Method 3A for the purposes of the final rule because they lack in detail and quality assurance/quality control requirements. Specifically, these two standards do not include the following: (1) Sensitivity of the method; (2) acceptable levels of analyzer calibration error; (3) acceptable levels of sampling system bias; (4) zero drift and calibration drift limits, time span, and required testing frequency; (5) a method to test the interference response of the analyzer; (6) procedures to determine the minimum sampling time per run and minimum measurement time; and (7) specifications for data recorders, in terms of resolution (all types) and recording intervals (digital and analog recorders, only).

The voluntary consensus standard ISO 12039:2001, Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods, is not acceptable as an alternative to EPA Method 3A. This ISO standard is similar to EPA Method 3A, but is missing some key features. In terms of sampling, the hardware required by ISO 12039:2001 does not include a three-way calibration valve assembly or equivalent to block the sample gas flow while calibration gases are introduced. In its calibration procedures, ISO 12039:2001 only specifies a two-point calibration while EPA Method 3A specifies a three-point calibration. Also, ISO 12039:2001 does not specify performance criteria for calibration error, calibration drift, or sampling system bias tests as in the EPA method, although checks of these quality control features are required by the ISO standard.

The standard, ASTM D3162 (1994) Standard Test Method for Carbon Monoxide in the Atmosphere (Continuous Measurement by Nondispersive Infrared Spectrometry), is impractical as an alternative to EPA Method 10 in the final rule because this ASTM standard, which is stated to be applicable in the range of 0.5–100 ppm CO, does not cover the range of EPA Method 10 (20–1,000 ppm CO) at the upper end (but states that it has a lower limit of sensitivity). Also, ASTM D3162 does not provide a procedure to remove carbon dioxide interference. Therefore, this ASTM standard is not appropriate for combustion source conditions. In terms of non-dispersive infrared instrument performance specifications, ASTM D3162 has much higher maximum allowable rise and fall times (5 minutes) than EPA Method 10 (which has 30 seconds).

The voluntary consensus standard CAN/CSA Z223.21–M1978, Method for the Measurement of Carbon Monoxide: 3—Method of Analysis by Non-Dispersive Infrared Spectrometry, is not acceptable as an alternative to EPA Method 10 because it is lacking in the following areas: (1) Sampling procedures; (2) procedures to correct for the carbon dioxide concentration; (3) instructions to correct the gas volume if CO_2 traps are used; (4) specifications to certify the calibration gases are within 2 percent of the target concentration; (5) mandatory instrument performance characteristics (*e.g.*, rise time, fall time, zero drift, span drift, precision); (6) quantitative specification of the span value maximum as compared to the measured value: The standard specifies that the instruments should be compatible with the concentration of gases to be measured, whereas EPA Method 10 specifies that the instrument span value should be no more than 1.5 times the source performance standard.

Two voluntary consensus standards, EN 12619:1999 Stationary Source Emissions—Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method, and ISO 14965:2000(E) Air Quality—Determination of Total Nonmethane Organic Compounds—Cryogenic Preconcentration and Direct Flame Ionization Method, are impractical alternatives to EPA Method 25 and 25A for the purposes of the final rule because the standards do not apply to solvent process vapors in concentrations greater than 40 ppm (EN 12619) and 10 ppm carbon (ISO 14965). Methods whose upper limits are this low are too limited to be useful in measuring source emissions, which are expected to be much higher.

Two of the 13 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, Flow Measurement by Velocity Traverse, for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters, for EPA Method 2.

Sections 63.9310, 63.9320, 63.9321 and 63.9322 to 40 CFR part 63, subpart PPPPP, list the EPA testing methods included in the regulation. Under 40 CFR 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

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

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by adding paragraph (b)(27) and revising paragraph (i)(3) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(27) ASTM D 6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, IBR approved for § 63.9307(c)(2).

* * * * *

(i) * * *

(3) ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'', IBR approved for §§ 63.865(b), 63.3360(e)(1)(iii), 63.4166(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), and 63.9323(a)(3).

* * * * *

■ 3. Part 63 is amended by adding subpart PPPPP to read as follows:

Subpart PPPPP—National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands

What This Subpart Covers

Sec.
63.9280 What is the purpose of subpart PPPPP?
63.9285 Am I subject to this subpart?
63.9290 What parts of my plant does this subpart cover?
63.9295 When do I have to comply with this subpart?

Emission Limitations

63.9300 What emission limitation must I meet?
63.9301 What are my options for meeting the emission limits?
63.9302 What operating limits must I meet?

General Compliance Requirements

63.9305 What are my general requirements for complying with this subpart?
63.9306 What are my continuous parameter monitoring system (CPMS) installation, operation, and maintenance requirements?
63.9307 What are my continuous emissions monitoring system installation, operation, and maintenance requirements?

Testing and Initial Compliance Requirements

63.9310 By what date must I conduct the initial compliance demonstrations?
63.9320 What procedures must I use?
63.9321 What are the general requirements for performance tests?
63.9322 How do I determine the emission capture system efficiency?
63.9323 How do I determine the add-on control device emission destruction or removal efficiency?
63.9324 How do I establish the emission capture system and add-on control device operating limits during the performance test?
63.9330 How do I demonstrate initial compliance with the emission limitation?

Continuous Compliance Requirements

63.9335 How do I monitor and collect data to demonstrate continuous compliance?
63.9340 How do I demonstrate continuous compliance with the emission limitation?

Notifications, Reports, and Records

63.9345 What notifications must I submit and when?
63.9350 What reports must I submit and when?
63.9355 What records must I keep?
63.9360 In what form and how long must I keep my records?

Other Requirements and Information

63.9365 What parts of the General Provisions apply to me?
63.9370 Who implements and enforces this subpart?
63.9375 What definitions apply to this subpart?

Tables to Subpart PPPPP of Part 63

Table 1 to Subpart PPPPP of Part 63. Emission Limitations
Table 2 to Subpart PPPPP of Part 63. Operating Limits
Table 3 to Subpart PPPPP of Part 63. Requirements for Initial Compliance Demonstrations
Table 4 to Subpart PPPPP of Part 63. Initial Compliance with Emission Limitations
Table 5 to Subpart PPPPP of Part 63. Continuous Compliance with Emission Limitations
Table 6 to Subpart PPPPP of Part 63. Requirements for Reports
Table 7 to Subpart PPPPP of Part 63. Applicability of General Provisions to Subpart PPPPP

Subpart PPPPP—National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Standards

What This Subpart Covers

§ 63.9280 What is the purpose of subpart PPPPP?

This subpart PPPPP establishes national emission standards for hazardous air pollutants (NESHAP) for engine test cells/stands located at major sources of hazardous air pollutants (HAP) emissions. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations contained in this NESHAP.

§ 63.9285 Am I subject to this subpart?

You are subject to this subpart if you own or operate an engine test cell/stand that is located at a major source of HAP emissions.

(a) An engine test cell/stand is any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines.

(b) An uninstalled engine is an engine that is not installed in, or an integrated part of, the final product.

(c) A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

§ 63.9290 What parts of my plant does this subpart cover?

This subpart applies to each new, reconstructed, or existing affected source.

(a) *Affected source.* An affected source is the collection of all equipment and activities associated with engine test cells/stands used for testing uninstalled stationary or uninstalled mobile (motive) engines located at a major source of HAP emissions.

(1) *Existing affected source.* An affected source is existing if you commenced construction or reconstruction of the affected source on or before May 14, 2002. A change in ownership of an existing affected source does not make that affected source a new or reconstructed affected source.

(2) *New affected source.* An affected source is new if you commenced construction of the affected source after May 14, 2002.

(3) *Reconstructed affected source.* An affected source is reconstructed if you meet the definition of reconstruction in § 63.2 of subpart A of this part and reconstruction is commenced after May 14, 2002. Changes made to an existing affected source primarily for the purpose of complying with revisions to engine testing requirements under 40 CFR parts 80, 86, 89, 90, 91, or 92 are not considered a modification or reconstruction. In addition, passive measurement and control instrumentation and electronics are not included as part of any affected source reconstruction evaluation.

(b) Existing affected sources do not have to meet the requirements of this subpart and of subpart A of this part.

(c) Any portion of a new or reconstructed affected source located at a major source that is used exclusively for testing internal combustion engines with rated power of less than 25 horsepower (hp) (19 kilowatts(kW)) does not have to meet the requirements of this subpart and of subpart A of this part except for the initial notification requirements of § 63.9345(b).

(d) Any portion of a new or reconstructed affected source located at a major source that meets any of the

criteria specified in paragraphs (d)(1) through (4) of this section does not have to meet the requirements of this subpart and of subpart A of this part.

(1) Any portion of the affected source used exclusively for testing combustion turbine engines.

(2) Any portion of the affected source used exclusively for testing rocket engines.

(3) Any portion of the affected source used in research and teaching activities at facilities that are not engaged in the development of engines or engine test services for commercial purposes.

(4) Any portion of the affected source operated to test or evaluate fuels (such as knock engines), transmissions, or electronics.

§ 63.9295 When do I have to comply with this subpart?

(a) *Affected sources.*

(1) If you start up your new or reconstructed affected source before May 27, 2003, you must comply with the emission limitations in this subpart no later than May 27, 2003.

(2) If you start up your new or reconstructed affected source on or after May 27, 2003, you must comply with the emission limitations in this subpart upon startup.

(b) *Area sources that become major sources.* If your new or reconstructed affected source is located at an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, your new or reconstructed affected source must be in compliance with this subpart when the area source becomes a major source.

(c) You must meet the notification requirements in § 63.9345 and in 40 CFR part 63, subpart A.

Emission Limitations

§ 63.9300 What emission limitations must I meet?

For each new or reconstructed affected source that is used in whole or in part for testing internal combustion engines with rated power of 25 hp (19 kW) or more and that is located at a major source, you must comply with the emission limitations in Table 1 to this subpart. (Tables are found at the end of this subpart.)

§ 63.9301 What are my options for meeting the emission limits?

You may use either a continuous parameter monitoring system (CPMS) or a continuous emission monitoring system (CEMS) to demonstrate compliance with the emission limitations. Continuous monitoring systems must meet the requirements in § 63.9306 (CPMS) and § 63.9307 (CEMS).

§ 63.9302 What operating limits must I meet?

(a) For any new or reconstructed affected source on which you use add-on controls, you must meet the operating limits specified in Table 2 to this subpart. These operating limits must be established during the performance test according to the requirements in § 63.9324. You must meet the operating limits at all times after you establish them.

(b) If you use an add-on control device other than those listed in Table 2 to this subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

General Compliane Requirements

§ 63.9305 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitation that applies to you at all times, except during periods of startup, shutdown, or malfunction (SSM) of your control device or associated monitoring equipment.

(b) If you must comply with the emission limitation, you must operate and maintain your engine test cell/stand, air pollution control equipment, and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times.

(c) You must develop and implement a written SSM plan (SSMP) for emission control devices and associated monitoring equipment according to the provisions in § 63.6(e)(3). The plan will apply only to emission control devices, and not to engine test cells/stands.

§ 63.9306 What are my continuous parameter monitoring system (CPMS) installation, operation, and maintenance requirements?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c) and (d) of this section according to paragraphs (a)(1) through (7) of this section. You must install, operate, and maintain each CPMS specified in paragraph (b) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that an engine test cell/stand is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device

or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position, and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (nondiverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the engine testing operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when an engine test cell/stand is operating. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the engine test cell/stand in operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.9350.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device, you must comply with the requirements in paragraphs (c)(1) through (3) of this section.

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, you must install a gas temperature monitor in the gas stream immediately before the catalyst bed, and if you established operating limits according to § 63.9324(b)(1) and (2), also install a gas temperature monitor in the gas stream immediately after the catalyst bed.

(i) If you establish operating limits according to § 63.9324(b)(1) and (2), then you must install the gas temperature monitors both upstream and downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the catalyst bed to measure the temperature difference across the bed.

(ii) If you establish operating limits according to § 63.9324(b)(3) and (4), then you must install a gas temperature monitor upstream of the catalyst bed. The temperature monitor must be in the gas stream immediately before the catalyst bed to measure the temperature.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owner's manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed near the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks anytime the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) Emission capture systems. The capture system monitoring system must comply with the applicable requirements in paragraphs (d)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a) and (d)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a) and (d)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

§ 63.9307 What are my continuous emissions monitoring system installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each CEMS to monitor carbon monoxide (CO) or total hydrocarbons (THC) and oxygen (O_2) at the outlet of the exhaust system of the engine test cell/stand or at the outlet of the emission control device.

(b) To comply with the CO or THC percent reduction emission limitation, you may install, operate, and maintain a CEMS to monitor CO or THC and O_2 at both the inlet and the outlet of the emission control device.

(c) To comply with either emission limitations, the CEMS must be installed and operated according to the requirements described in paragraphs (c)(1) through (4) of this section.

(1) You must install, operate, and maintain each CEMS according to the applicable Performance Specification (PS) of 40 CFR part 60, appendix B (PS–3 or PS–4A).

(2) You must conduct a performance evaluation of each CEMS according to the requirements in 40 CFR 63.8 and according to PS–3 of 40 CFR part 60, appendix B, using Reference Method 3A or 3B for the O_2 CEMS, and according to PS–4A of 40 CFR part 60, appendix B, using Reference Method 10 or 10B for

the CO CEMS. If the fuel used in the engines being tested is natural gas, you may use ASTM D 6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide and Oxygen Concentrations in Emissions from Natural Gas Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers (incorporated by reference, see § 63.14). As an alternative to Method 3B, you may use ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' (incorporated by reference, see § 63.14).

(3) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. You must have at least two data points, each representing a different 15-minute period within the same hour, to have a valid hour of data.

(4) All CEMS data must be reduced as specified in § 63.8(g)(2) and recorded as CO concentration in parts per million by volume, dry basis (ppmvd), corrected to 15 percent O_2 content.

(d) If you have CEMS that are subject to paragraph (a) or (b) of this section, you must properly maintain and operate the monitors continuously according to the requirements described in paragraphs (d)(1) and (2) of this section.

(1) *Proper Maintenance.* You must maintain the monitoring equipment at all times that the engine test cell/stand is operating, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(2) *Continued Operation.* You must operate your CEMS according to paragraphs (d)(2)(i) and (ii) of this section.

(i) You must conduct all monitoring in continuous operation at all times that the engine test cell/stand is operating, except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration drift checks and required zero and high-level adjustments). Quality assurance or control activities must be performed according to procedure 1 of 40 CFR part 60, appendix F.

(ii) Data recorded during monitoring malfunctions, associated repairs, out-of-control periods, and required quality assurance or control activities must not be used for purposes of calculating data averages. You must use all of the data collected from all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring equipment to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

Testing and Initial Compliance Requirements

§ 63.9310 By what date must I conduct the initial compliance demonstrations?

You must conduct the initial compliance demonstrations that apply to you in Table 3 to this subpart within 180 calendar days after the compliance date that is specified for your new or reconstructed affected source in § 63.9295 and according to the provisions in § 63.7(a)(2).

§ 63.9320 What procedures must I use?

(a) You must conduct each initial compliance demonstration that applies to you in Table 3 to this subpart.

(b) You must conduct an initial performance evaluation of each capture and control system according to §§ 63.9321, 63.9322, 63.9323 and 63.9324, and each CEMS according to the requirements in 40 CFR 63.8 and according to the applicable Performance Specification of 40 CFR part 60, appendix B (PS–3 or PS–4A).

(c) The initial demonstration of compliance with the carbon monoxide (CO) or total hydrocarbon (THC) concentration limitation consists of the first 4-hour rolling average CO or THC concentration recorded after completion of the CEMS performance evaluation. You must correct the CO or THC concentration at the outlet of the engine test cell/stand or the emission control device to a dry basis and to 15 percent O_2 content according to Equation 1 of this section:

$$C_c = C_{unc}\left(\frac{5.9}{(20.9 - \%O_{2d})}\right) \qquad \text{(Eq. 1)}$$

Where:

C_c = concentration of CO or THC, corrected to 15 percent oxygen, ppmvd

C_{unc} = total uncorrected concentration of CO or THC, ppmvd

$\%O_{2d}$ = concentration of oxygen measured in gas stream, dry basis, percent by volume.

(d) The initial demonstration of compliance with the CO or THC percent reduction emission limitation consists of the first 4-hour rolling average percent reduction in CO or THC recorded after completion of the performance evaluation of the capture/control system and/or CEMS. You must complete the actions described in paragraphs (d)(1) through (2) of this section.

(1) Correct the CO or THC concentrations at the inlet and outlet of the emission control device to a dry basis and to 15 percent O_2 content using Equation 1 of this section.

(2) Calculate the percent reduction in CO or THC using Equation 2 of this section:

$$R = \frac{C_i - C_o}{C_i} \times 100 \qquad \text{(Eq. 2)}$$

Where:

R = percent reduction in CO or THC

C_i = corrected CO or THC concentration at inlet of the emission control device

C_o = corrected CO or THC concentration at the outlet of the emission control device.

§ 63.9321 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.9310 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative engine testing conditions.* You must conduct the performance test under representative operating conditions for the test cell/stand. Operations during periods of SSM, and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.9322. You must conduct each performance test of an add-on control

device according to the requirements in § 63.9323.

§ 63.9322 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.9310.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a potential to emit (PTE) and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All engine test operations creating exhaust gases for which the test is applicable are conducted within the capture system.

(b) *Measuring capture efficiency.* If the capture system does not meet the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the two protocols described in paragraphs (c) and (d) of this section to measure capture efficiency. The capture efficiency measurements use total volatile hydrocarbon (TVH) capture efficiency as a surrogate for organic HAP capture efficiency. For the protocol in paragraph (c) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours in duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single engine test to go from the beginning to the end.

(c) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the engine test cell/stand and all areas where emissions from the engine testing subsequently occur. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or 204C of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or 204C of appendix M to 40 CFR part 51 measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct, and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or 204E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D of appendix M to 40 CFR part 51 if the enclosure is a temporary total enclosure.

(ii) Use Method 204E of appendix M to 40 CFR part 51 if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the engine test cell/stand operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 1 of this section:

$$CE = \frac{TVH_{captured}}{\left(TVH_{captured} + TVH_{uncaptured}\right)} \times 100 \qquad \text{(Eq. 1)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent

$TVH_{captured}$ = total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, kg, determined according to paragraph (c)(2) of this section

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg, determined according to paragraph (c)(3) of this section.

(5) Determine the capture efficiency the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Alternative capture efficiency protocol.* As an alternative to the procedure specified in paragraph (c) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the data quality objective or lower control limit approach as described in appendix A to subpart KK of this part.

§ 63.9323 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.9310. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. The ANSI/ASME PTC 19.10–1981 Part 10 is

an acceptable alternative to Method 3B (incorporated by reference, see § 63.14).

(4) Use Method 4 of appendix A to 40 CFR part 60, to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60, as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer, and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million at the control device outlet.

(2) Use Method 25A of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer, and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(c) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c (12)(0.0416)\left(10^{-6}\right) \qquad \text{(Eq. 1)}$$

Where:

M_f = total gaseous organic emissions mass flow rate, kg/hour (kg/h)

C_c = concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, parts per million by volume (ppmv), dry basis

Q_{sd} = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h)

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin [K] and 760 millimeters of mercury [mmHg]).

(d) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section:

$$DRE = 100 \times \frac{M_{fi} - M_{fo}}{M_{fi}} \qquad \text{(Eq. 2)}$$

Where:

DRE = organic emissions destruction or removal efficiency of the add-on control device, percent

M_{fi} = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(e) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.9324 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.9310, you must establish the operating limits required by § 63.9302 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.9302.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e.,* conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendation and conduct a new performance test to determine

destruction efficiency according to § 63.9323.

(c) *Emission capture system.* For each capture device that is not part of a PTE that meets the criteria of § 63.9322(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (c)(1) and (2) of this section. The operating limit for a PTE is specified in Table 3 to this subpart.

(1) During the capture efficiency determination required by § 63.9310, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.9330 How do I demonstrate initial compliance with the emission limitation?

(a) You must demonstrate initial compliance with the emission limitation that applies to you according to Table 3 to this subpart.

(b) You must submit the Notification of Compliance Status containing results of the initial compliance demonstration according to the requirements in § 63.9345(c).

Continuous Compliance Requirements

§ 63.9335 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration drift checks and required zero and high-level adjustments of the monitoring system), you must conduct all monitoring in continuous operation at all times the engine test cell/stand is operating.

(b) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing the performance of the emission control device or in assessing emissions from the new or reconstructed affected source.

§ 63.9340 How do I demonstrate continuous compliance with the emission limitations?

(a) You must demonstrate continuous compliance with the emission limitation in Table 1 to this subpart that applies to you according to methods specified in Table 5 to this subpart.

(b) You must report each instance in paragraphs (b)(1) and (2) of this section. These instances are deviations from the emission limitation in this subpart and must be reported according to the requirements in § 63.9350.

(1) You must report each instance in which you did not meet the emission limitation that applies to you.

(2) You must report each instance in which you did not meet the requirements in Table 7 to this subpart that apply to you.

(c) *Startups, shutdowns, and malfunctions.* During periods of SSM of control device and associated monitoring equipment, you must operate in accordance with your SSMP.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of SSM of control devices and associated monitoring equipment are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP.

(2) The Administrator will determine whether deviations that occur during a period of SSM of control devices and associated monitoring equipment are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.9345 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.8(e), 63.8(f)(4) and (6), and 63.9(b), (g)(1), (g)(2) and (h) that apply to you by the dates specified.

(b) If you own or operate a new or reconstructed test cell/stand used for testing internal combustion engines, you are required to submit an Initial Notification as specified in paragraphs (b)(1) through (3) of this section.

(1) As specified in § 63.9(b)(2), if you start up your new or reconstructed affected source before the effective date of this subpart, you must submit an Initial Notification not later than 120 calendar days after May 27, 2003.

(2) As specified in § 63.9(b), if you start up your new or reconstructed affected source on or after the effective date of this subpart, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(3) If you are required to submit an Initial Notification but are otherwise not affected by the requirements of this subpart, in accordance with § 63.9290(c), your notification should include the information in § 63.9(b)(2)(i) through (v) and a statement that your new or reconstructed engine test cell/stand has no additional requirements and explain the basis of the exclusion (for example, that the test cell/stand is used exclusively for testing internal combustion engines with rated power of less than 25 hp (19 kW)).

(c) If you are required to comply with the emission limitations in Table 1 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). For each initial compliance demonstration with the emission limitation, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(d) You must submit a notification of initial performance evaluation of your CEMS or performance testing of your control device at least 60 calendar days before the performance testing/evaluation is scheduled to begin as required in § 63.8(e)(2).

§ 63.9350 What reports must I submit and when?

(a) If you own or operate a new or reconstructed affected source that must meet the emission limitation, you must submit a semiannual compliance report according to Table 6 to this subpart by the applicable dates specified in paragraphs (a)(1) through (6) of this section, unless the Administrator has approved a different schedule.

(1) The first semiannual compliance report must cover the period beginning on the compliance date specified in § 63.9295 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date specified in § 63.9295.

(2) The first semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified in § 63.9295.

(3) Each subsequent semiannual compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each new or reconstructed engine test cell/stand that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established the date for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(6) If you had an SSM of a control device or associated monitoring equipment during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in paragraphs § 63.10(d)(5)(i).

(b) If there is no deviation from the applicable emission limitation and the CEMS or CPMS was not out-of-control, according to § 63.8(c)(7), the semiannual compliance report must contain the information described in paragraphs (b)(1) through (4) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) A statement that no deviation from the emission limit occurred during the reporting period and that no CEMS or CPMS was out-of-control, according to § 63.8(c)(7).

(c) For each deviation from an emission limit, the semiannual compliance report must include the information in paragraphs (b)(1) through (3) of this section and the information included in paragraphs (c)(1) through (4) of this section.

(1) The date and time that each deviation started and stopped.

(2) The total operating time of each new or reconstructed engine test cell/stand during the reporting period.

(3) A summary of the total duration of the deviation during the reporting period (recorded in 4-hour periods), and the total duration as a percent of the total operating time during that reporting period.

(4) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(d) For each CEMS or CPMS deviation, the semiannual compliance report must include the information in paragraphs (b)(1) through (3) of this section and the information included in paragraphs (d)(1) through (10) of this section.

(1) The date and time that each CEMS or CPMS was inoperative except for zero (low-level) and high-level checks.

(2) The date and time that each CEMS or CPMS was out-of-control including the information in § 63.8(c)(8).

(3) A summary of the total duration of CEMS or CPMS downtime during the reporting period (reported in 4-hour periods), and the total duration of CEMS or CPMS downtime as a percent of the total engine test cell/stand operating time during that reporting period.

(4) A breakdown of the total duration of CEMS or CPMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes and other unknown causes.

(5) The monitoring equipment manufacturer(s) and model number(s) of each monitor.

(6) The date of the latest CEMS or CPMS certification or audit.

(7) The date and time period of each deviation from an operating limit in Table 2 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of SSM or during another period.

(8) A summary of the total duration of each deviation from an operating limit in Table 2 to this subpart, each bypass of the add-on control device during the semiannual reporting period, and the total duration as a percent of the total source operating time during that semiannual reporting period.

(9) A breakdown of the total duration of the deviations from the operating limits in Table 2 to this subpart and bypasses of the add-on control device during the semiannual reporting period by identifying deviations due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(10) A description of any changes in CEMS, CPMS, or controls since the last reporting period.

(e) If you had an SSM of a control device or associated monitoring equipment during the semiannual reporting period that was not consistent with your SSMP, you must submit an immediate SSM report according to the requirements in § 63.10(d)(5)(ii).

§ 63.9355 What records must I keep?

(a) You must keep the records as described in paragraphs (a)(1) through (5) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of performance evaluations as required in § 63.10(b)(2)(viii).

(3) Records of the occurrence and duration of each malfunction of the air pollution control equipment, if applicable, as required in § 63.10(b)(2)(ii).

(4) Records of all maintenance on the air pollution control equipment, if applicable, as required in § 63.10(b)(iii).

(5) The calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices.

(b) For each CPMS, you must keep the records as described in paragraphs (b)(1) through (7) of this section.

(1) For each deviation, a record of whether the deviation occurred during a period of SSM of the control device and associated monitoring equipment.

(2) The records in § 63.6(e)(3)(iii) through (v) related to SSM.

(3) The records required to show continuous compliance with each operating limit specified in Table 2 to this subpart that applies to you.

(4) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent, as specified in § 63.9322(a).

(5) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.9321 and 63.9322(b) through (e), including the records specified in paragraphs (b)(5)(i) and (ii) of this section that apply to you.

(i) Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure. Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix

M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(ii) Records for an alternative protocol. Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.9322(e), if applicable.

(6) The records specified in paragraphs (b)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.9323.

(i) Records of each add-on control device performance test conducted according to §§ 63.9321, 63.9322, and 63.9323.

(ii) Records of the engine testing conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(7) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.9324 and to document compliance with the operating limits as specified in Table 2 to this subpart.

(c) For each CEMS, you must keep the records as described in paragraphs (c)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (*i.e.*, superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Request for alternatives to the relative accuracy test for CEMS as required in § 63.8(f)(6)(i), if applicable.

(4) The records in § 63.6(e)(3)(iii) through (v) related to SSM of the control device and associated monitoring equipment.

(d) You must keep the records required in Table 5 to this subpart to show continuous compliance with each emission limitation that applies to you.

§ 63.9360 In what form and how long must I keep my records?

(a) You must maintain all applicable records in such a manner that they can be readily accessed and are suitable for inspection according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each records for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must retain your records of the most recent 2 years on site, or your records must be accessible on site. Your records of the remaining 3 years may be retained off site.

Other Requirements and Information

§ 63.9365 What parts of the General Provisions apply to me?

Table 7 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.9370 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are described in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the emission limitations in § 63.9300 under § 63.6(g).

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9375 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA; in 40 CFR 63.2, and in this section:

CAA means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Public Law 101–549, 104 Statute 2399).

Area source means any stationary source of HAP that is not a major source as defined in this part.

Combustion turbine engine means a device in which air is compressed in a compressor, enters a combustion chamber, and is compressed further by the combustion of fuel injected into the combustion chamber. The hot compressed combustion gases then expand over a series of curved vanes or blades arranged on a central spindle that rotates.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitations;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation in this subpart during malfunction, regardless or whether or not such failure is permitted by this subpart.

Engine means any internal combustion engine, any combustion turbine engine, or any rocket engine.

Engine Test Cell/Stand means any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines.

Hazardous Air Pollutant (HAP) means any air pollutant listed in or pursuant to section 112(b) of the CAA.

Internal combustion engine means a device in which air enters a combustion chamber, is mixed with fuel, compressed in the chamber, and combusted. Fuel may enter the combustion chamber with the air or be injected into the combustion chamber. Expansion of the hot combustion gases in the chamber rotates a shaft, either through a reciprocating or rotary action. For purposes of this subpart, this definition does not include combustion turbine engines.

Major source, as used in this subpart, shall have the same meaning as in § 63.2.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Rated power means the maximum power output of an engine in use.

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

Responsible official means responsible official as defined by 40 CFR 70.2.

Rocket engine means a device consisting of a combustion chamber in which materials referred to as propellants, which provide both the fuel and the oxygen for combustion, are burned. Combustion gases escape through a nozzle, providing thrust.

Uninstalled engine means an engine not installed in, or an integrated part of, the final product.

Tables to Subpart PPPPP of Part 63

TABLE 1 TO SUBPART PPPPP OF PART 63.—EMISSION LIMITATIONS

You must comply with the emission limits that apply to your affected source in the following table as required by § 63.9300:

For each new or reconstructed affected source located at a major source facility that is used in whole or in part for testing . . .	You must meet one of the following emission limitations:
1. internal combustion engines with rated power of 25 hp (19 kW) or more.	a. limit the concentration of CO or THC to 20 ppmvd or less (corrected to 15 percent O_2 content); or b. achieve a reduction in CO or THC of 96 percent or more between the inlet and outlet concentrations (corrected to 15 percent O_2 content) of the emission control device.

TABLE 2 TO SUBPART PPPPP OF PART 63.—OPERATING LIMITS

If you are required to comply with operating limits in § 63.9302, you must comply with the applicable operating limits in the following table:

For the following device . . .	You must meet the following operating limit . . .	and you must demonstrate continuous compliance with the operating limit by . . .
1. Thermal oxidizer	a. The average combustion temperature in any 3-hour period must not fall below the the combustion temperature limit established according to § 63.9324(a).	i. Collecting the combustion temperature data according to § 63.9306(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average combustion temperature at or above the temperature limit.
2. Catalytic oxidizer	a. The average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to § 63.9324(b).	i. Collecting the temperature data according to § 63.9306(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit.
	b. Either ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to § 63.9324(b)(2) or develop and implement an inspection and maintenance plan according to § 63.9324(b)(3) and (4).	i. Either collecting the temperature data according to § 63.9306(c), reducing the data to 3-hour block averages, and maintaining the 3-hour average temperature difference at or above the temperature difference limit; or ii. Complying with the inspection and maintenance plan developed according to § 63.9324(b)(3) and (4).
3. Emission capture system that is a PTE according to § 63.9322(a).	a. The direction of the air flow at all times must be into the enclosure; and either	i. Collecting the direction of air flow; and either the facial velocity of air through all natural draft openings according to § 63.9306(d)(1) or the pressure drop across the enclosure according to § 63.9306(d)(2); and ii. Maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
	b. The average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or	Follow the requirements in 3ai and ii of this table.
	c. The pressure drop across the enclosure must be at least 0.007 inch H_2O, as established in Method 204 of appendix M to 40 CFR part 51.	Follow the requirements in 3ai and ii of this table.

TABLE 2 TO SUBPART PPPPP OF PART 63.—OPERATING LIMITS—Continued

If you are required to comply with operating limits in § 63.9302, you must comply with the applicable operating limits in the following table:

For the following device . . .	You must meet the following operating limit . . .	and you must demonstrate continuous compliance with the operating limit by . . .
4. Emission capture system that is not a PTE according to § 63.9322(a).	a. The average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according § 63.9306(d).	i. Collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.9306(d); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

TABLE 3 TO SUBPART PPPPP OF PART 63.—REQUIREMENTS FOR INITIAL COMPLIANCE DEMONSTRATIONS

As stated in § 63.9321, you must demonstrate initial compliance with each emission limitation that applies to you according to the following table:

For each new or reconstructed affected source complying with . . .	You must . . .	Using . . .	According to the following requirements . . .
1. The CO or THC outlet concentration emission limitation.	a. Demonstrate CO or THC emissions are 20 ppmvd or less.	i. EPA Methods 3A and 10 of appendix A to 40 CFR part 60 for CO measurement or EPA Method 25A of appendix A to 40 CFR part 60 for THC measurement; or	You must demonstrate that the outlet concentration of CO or THC emissions from the test cell/stand or emission control device is 20 ppmvd or less, corrected to 15 percent O_2 content, using the first 4-hour rolling average after a successful performance evaluation.
		ii. A CEMS for CO or THC and O_2 at the outlet of the engine test cell/stand or emission control device.	This demonstration is conducted immediately following a successful performance evaluation of the CEMS as required in § 63.9320(b). The demonstration consists of the first 4-hour rolling average of measurements. The CO or THC concentration must be corrected to 15 percent O_2 content, dry basis using Equation 1 in § 63.9320.
2. The CO or THC percent reduction emission limitation.	a. Demonstrate a reduction in CO or THC of 96 percent or more.	i. You must conduct an initial performance test to determine the capture and control efficiencies of the equipment and to establish operating limits to be achieved on a continuous basis; or	You must demonstrate that the reduction in CO or THC emissions is at least 96 percent using the first 4-hour rolling average after a successful performance evaluation. Your inlet and outlet measurements must be on a dry basis and corrected to 15 percent O_2 content.
		ii. A CEMS for CO or THC and O_2 at both the inlet and outlet of the emission control device.	This demonstration is conducted immediately following a successful performance evaluation of the CEMS as required in § 63.9320(b). The demonstration consists of the first 4-hour rolling average of measurements. The inlet and outlet CO or THC concentrations must be corrected to 15 percent O_2 content using Equation 1 in § 63.9320. The reduction in CO or THC is calculated using Equation 2 in § 63.9320.

TABLE 4 TO SUBPART PPPPP OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

As stated in § 63.9330, you must demonstrate initial compliance with each emission limitation that applies to you according to the following table:

For the . . .	You have demonstrated initial compliance if . . .
1. CO or THC concentration emission limitation	The first 4-hour rolling average CO or THC concentration is 20 ppmvd or less, corrected to 15 percent O_2 content.
2. CO or THC percent reduction emission limitation	The first 4-hour rolling average reduction in CO or THC is 96 percent or more, dry basis, corrected to 15 percent O_2 content.

TABLE 5 TO SUBPART PPPPP OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS

As stated in § 63.9340, you must demonstrate continuous compliance with each emission limitation that applies to you according to the following table:

For the . . .	You must . . .	By . . .
1. CO or THC concentration emission limitation	a. Demonstrate CO or THC emissions are 20 ppmvd or less over each 4-hour rolling averaging period.	i. Collecting the CPMS data according to § 63.9306(a), reducing the measurements to 1-hour averages; or ii. Collecting the CEMS data according to § 63.9307(a), reducing the measurements to 1-hour averages, correcting them to 15 percent O_2 content, dry basis, according to § 63.9320;
2. CO or THC percent reduction emission limitation.	a. Demonstrate a reduction in CO or THC of 96 percent or more over each 4-hour rolling averaging period.	i. Collecting the CPMS data according to § 63.9306(a), reducing the measurements to 1-hour averages; or ii. Collecting the CEMS data according to § 63.9307(b), reducing the measurements to 1-hour averages, correcting them to 15 percent O_2 content, dry basis, calculating the CO or THC percent reduction according to § 63.9320.

TABLE 6 TO SUBPART PPPPP OF PART 63.—REQUIREMENTS FOR REPORTS

As stated in § 63.9350, you must submit each report that applies to you according to the following table:

If you own or operate a new or reconstructed affected source that must comply with emission limitations, you must submit a . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. If there are no deviations from the emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period.	Semiannually, according to the requirements in § 63.9350.
	b. If there were no periods during which the CEMS or CPMS were out of control as specified in § 63.8(c)(7), a statement that there were no periods during which the CEMS or CPMS was out of control during the reporting period.	Semiannually, according to the requirements in § 63.9350.
	c. If you have a deviation from any emission limitation during the reporting period, the report must contain the information in § 63.9350(c).	Semiannually, according to the requirements in § 63.9350.
	d. If there were periods during which the CEMS or CPMS were out of control, as specified in § 63.8(c)(7), that report must contain the information in § 63.9350(d).	Semiannually, according to the requirements in § 63.9350.
	e. If you had an SSM of a control device or associated monitoring equipment during the reporting period, the report must include the information in § 63.10(d)(5)(i).	Semiannually, according to the requirements in § 63.9350.

TABLE 7 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP

As stated in 63.9365, you must comply with the General Provisions in §§ 63.1 through 63.15 that apply to you according to the following table:

Citation	Subject	Brief description	Applies to subpart PPPPP
§ 63.1(a)(1)	Applicability	General applicability of the General Provisions.	Yes. Additional terms defined in § 63.9375.
§ 63.1(a)(2)–(4)	Applicability	Applicability of source categories	Yes.
§ 63.1(a)(5)	[Reserved].		
§ 63.1(a)(6)–(7)	Applicability	Contact for source category information; extension of compliance through early reduction.	Yes.
§ 63.1(a)(8)	Applicability	Establishment of State rules or programs.	No. Refers to State programs.
§ 63.1(a)(9)	[Reserved].		
§ 63.1(a)(10)–(14)	Applicability	Explanation of time periods, postmark deadlines.	Yes.
§ 63.1(b)(1)	Applicability	Initial applicability	Yes. Subpart PPPPP clarifies applicability at § 63.9285.
§ 63.1(b)(2)	Applicability	Title V operating permit-reference to part 70.	Yes. All major affected sources are required to obtain a Title V permit.
§ 63.1(b)(3)	Applicability	Record of applicability determination.	Yes.
§ 63.1(c)(1)	Applicability	Applicability after standards are set.	Yes. Subpart PPPPP clarifies the applicability of each paragraph of subpart A to sources subject to subpart PPPPP.
§ 63.1(c)(2)	Applicability	Title V permit requirement for area sources.	No. Area sources are not subject to subpart PPPPP.
§ 63.1(c)(3)	[Reserved].		
§ 63.1(c)(4)	Applicability	Extension of compliance for existing sources.	No. Existing sources are not covered by the substantive control requirements of subpart PPPPP.
§ 63.1(c)(5)	Applicability	Notification requirements for an area source becoming a major source.	Yes.
§ 63.1(d)	[Reserved].		
§ 63.1(e)	Applicability	Applicability of permit program before a relevant standard has been set.	Yes.
§ 63.2	Definitions	Definitions for Part 63 standards	Yes. Additional definitions are specified in § 63.9375.
§ 63.3	Units and Abbreviations	Units and abbreviations for Part 63 standards.	Yes.
§ 63.4	Prohibited Activities	Prohibited activities; compliance date; circumvention, severability.	Yes.
§ 63.5(a)	Construction/Reconstruction	Construction and reconstruction—applicability.	Yes.
§ 63.5(b)(1)	Construction/Reconstruction	Requirements upon construction or reconstruction.	Yes.
§ 63.5(b)(2)	[Reserved].		

TABLE 7 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP—Continued

As stated in 63.9365, you must comply with the General Provisions in §§ 63.1 through 63.15 that apply to you according to the following table:

Citation	Subject	Brief description	Applies to subpart PPPPP
§ 63.5(b)(3)	Construction/Reconstruction	Approval of construction	Yes.
§ 63.5(b)(4)	Construction/Reconstruction	Notification of construction	Yes.
§ 63.5(b)(5)	Construction/Reconstruction	Compliance	Yes.
§ 63.5(b)(6)	Construction/Reconstruction	Addition of equipment	Yes.
§ 63.5(c)	[Reserved]		
§ 63.5(d)	Construction/Reconstruction	Application for construction reconstruction.	Yes.
§ 63.5(e)	Construction/Reconstruction	Approval of construction or reconstruction.	Yes.
§ 63.5(f)	Construction/Reconstruction	Approval of construction or reconstruction based on prior State review.	Yes.
§ 63.6(a)	Applicability	Applicability of standards and monitoring requirements.	Yes.
§ 63.6(b)(1)–(2)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for 112(f).	Yes.
§ 63.6(b)(3)	Compliance Dates for New and Reconstructed Sources.	Compliance dates for sources constructed or reconstructed before effective date.	No. Compliance is required by startup or effective date.
§ 63.6(b)(4)	Compliance Dates for New and Reconstructed Sources.	Compliance dates for sources also subject to § 112(f) standards.	Yes.
§ 63.6(b)(5)	Compliance Dates for New and Reconstructed Sources.	Notification	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Sources.	Compliance dates for new and reconstructed area sources that become major.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Effective date establishes compliance date.	No. Existing sources are not covered by the substantive control requirements of subpart PPPPP.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance Dates for Existing Sources.	Compliance dates for existing area sources that becomes major.	Yes. If the area source become a major source by addition or reconstruction, the added or reconstructed portion will be subject to subpart PPPPP.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)–(2)	Operation and Maintenance Requirements.	Operation and maintenance	Yes. Except that you are not required to have an SSMP for control devices and associated monitoring equipment.
§ 63.6(e)(3)	SSMP	1. Requirement for SSM and SSMP. 2. Content of SSMP.	Yes.You must develop an SSMP for each control device and associated monitoring equipment.

TABLE 7 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP—Continued

As stated in 63.9365, you must comply with the General Provisions in §§ 63.1 through 63.15 that apply to you according to the following table:

Citation	Subject	Brief description	Applies to subpart PPPPP
§ 63.6(f)(1)	Compliance Except During SSM	You must comply with emission standards at all times except during SSM of control devices or associated monitoring equipment.	Yes, but you must comply with emission standards at all times except during SSM of control devices and associated monitoring equipment only.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards.	Requirements for opacity/VE standards.	No. Subpart PPPPP does not establish opacity/VE standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	No. Compliance extension provisions apply to existing sources, which do not have emission limitations in subpart PPPPP.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with rule.	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations: Must conduct within 180 days after first subject to rule.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA Section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification Performance Test	Must notify Administrator 60 days before the test.	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	If have to reschedule performance test, must notify Administrator 5 days before schedule date of rescheduled date.	Yes.
§ 63.7(c)	Quality Assurance/Test Plan	1. Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with. 2. Test plan approval procedures 3. Performance audit requirements. 4. Internal and external QA procedures for testing.	Yes. Yes. Yes. Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes.

TABLE 7 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP—Continued

As stated in 63.9365, you must comply with the General Provisions in §§ 63.1 through 63.15 that apply to you according to the following table:

Citation	Subject	Brief description	Applies to subpart PPPPP
§ 63.7(e)(3)	Test Run Duration	1. Must have three test runs of at least 1 hour each. 2. Compliance is based on arithmetic mean of three runs. 3. Conditions when data from an additional test run can be used.	Yes. Yes. Yes.
§ 63.7(e)(4)	Other Performance Testing	Administrator may require other testing under section 114 of the CAA.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis	1. Must include raw data in performance test report. 2. Must submit performance test data 60 days after end of test with the Notification of Compliance Status. 3. Keep data for 5 years	Yes. Yes. Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard.	Yes. Subpart PPPPP contains specific requirements for monitoring at § 63.9325.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved]		
§ 63.8(a)(4)	Monitoring with Flares	Unless your rule says otherwise, the requirements for flares in 63.11 apply.	No. Subpart PPPPP does not have monitoring requirements for flares.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	1. Specific requirements for installing monitoring systems. 2. Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise. 3. If more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes. Yes. Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable CMS Malfunctions.	1. Follow the SSMP for routine repairs of CMS. 2. Keep parts for routine repairs of CMS readily available. 3. Reporting requirements for SSM when action is described in SSMP.	Yes. Yes. Yes.
§ 63.8(c)(1)(ii)	SSM of CMS Not in SSMP	Reporting requirements for SSM of CMS when action is not described in SSMP.	Yes.

TABLE 7 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP—Continued

As stated in 63.9365, you must comply with the General Provisions in §§ 63.1 through 63.15 that apply to you according to the following table:

Citation	Subject	Brief description	Applies to subpart PPPPP
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	1. How Administrator determines if source complying with operation and maintenance requirements. 2. Review of source O&M procedures, records, manufacturer's instructions and recommendations, and inspection	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	1. Must install to get representative emission of parameter measurements. 2. Must verify operational status before or at performance test.	Yes. Yes.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	1. CMS must be operating except during breakdown, out of control, repair, maintenance, and high-level calibration drifts. 2. COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period. 3. CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	No. Follow specific requirements in § 63.9335(a) and (b) of subpart PPPPP. No. Follow specific requirements in § 63.9335(a) and (b) of subpart PPPP. No. Follow specific requirements in § 63.9335(a) and (b) of subpart PPPPP.
§ 63.8(c)(5)	COMS Minimum Procedures	COMS minimum procedures	No. Subpart PPPPP does not have opacity/VE standards.
§ 63.8(c)(6)–(8)	CMS Requirements	Zero and high-level calibration check requirements, out-of-control periods.	Yes. Except that PPPP does not require COMS.
§ 63.8(d)	CMS Quality Control	1. Requirements for CMS quality control, including calibration, etc. 2. Must keep quality control plan on record for 5 years. Keep old versions for 5 years after revisions.	Yes. Yes.
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports.	Yes. Except for § 63.8(e)(5)(ii), which applies to COMS.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)	Data Reduction	1. COMS 6-minute averages calculated over at least 36 evenly spaced data points. 2. CEMS 1-hour averages computed over at least 4 equally spaced data points	Yes. Except that provisions for COMS are not applicable. Averaging periods for demonstrating compliance are specified at § 63.9340.
§ 63.8(g)(5)	Data Reduction	Data that cannot be used in computing averages for CEMS and COMS.	No. Specific language is located at § 63.9335(a).
§ 63.9(a)	Notification Requirements	Applicability and State delegation	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	1. Submit notification subject 120 days after effective date.	Yes.

TABLE 7 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP—Continued

As stated in 63.9365, you must comply with the General Provisions in §§ 63.1 through 63.15 that apply to you according to the following table:

Citation	Subject	Brief description	Applies to subpart PPPPP
		2. Notification of intent to construct/ reconstruct; notification of commencement of construct/ reconstruct; notification of startup. 3. Contents of each	Yes. Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed BACT/LAER.	No. Compliance extensions do not apply to new or reconstructed sources.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	No. Subpart PPPPP does not require performance testing.
§ 63.9(f)	Notification of Opacity/VE Test	Notify Administrator 30 days prior	No. Subpart PPPPP does not have opacity/VE standards.
§ 63.9(g)(1)	Additional Notifications when Using CMS.	Notification of performance evaluation.	Yes.
§ 63.9(g)(2)	Additional Notifications when Using CMS.	Notification of use of COMS data	No. Subpart PPPPP does not contain opacity or VE standards.
§ 63.9(g)(3)	Additional Notifications when Using CMS.	Notification that exceeded criterion for relative accuracy.	Yes. If alternative is in use.
§ 63.9(h)(1)–(6)	Notification of Compliance Status	1. Contents 2. Due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after. 3. When to submit to Federal vs. State authority.	Yes. Yes. Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change.	Yes.
§ 63.10(a)	Recordkeeping/Reporting	1. Applies to all, unless compliance extension. 2. When to submit to Federal vs. State authority. 3. Procedures for owners of more than one source.	Yes. Yes. Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	1. General requirements 2. Keep all records readily available. 3. Keep for 5 years	Yes. Yes. Yes.
§ 63.10(b)(2)(i)–(v)	Records Related to SSM	1. Occurrence of each of operation (process equipment). 2. Occurrence of each malfunction of air pollution equipment. 3. Maintenance on air pollution control equipment. 4. Actions during SSM 5. All information necessary to demonstrate conformance with the SSMP.	Yes. Yes. Yes. Yes. Yes.

TABLE 7 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP—Continued

As stated in 63.9365, you must comply with the General Provisions in §§ 63.1 through 63.15 that apply to you according to the following table:

Citation	Subject	Brief description	Applies to subpart PPPPP
§ 63.10(b)(2)(vi)–(xi)	CMS Records	Malfunctions, inoperative, out of control.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes.
§ 63.10(c)(1)–(6), (9)–(15)	Records	Additional records for CEMS	Yes.
§ 63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS.	No. Specific language is located at § 63.9355 of subpart PPPPP.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority.	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	No. Subpart PPPPP does not have opacity/VE standards.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	No. Compliance extensions do not apply to new or reconstructed sources.
§ 63.10(d)(5)	SSM Reports	Contents and submission	Yes.
§ 63.10(e)(1) and (2)(i)	Additional CMS Reports	Additional CMS reports	Yes.
§ 63.10(e)(2)(ii)	Additional CMS Reports	COMS-related report	No. Subpart PPPPP does not require COMS.
§ 63.10(e)(3)	Additional CMS Reports	Excess emissions and parameter exceedances reports.	No. Specific language is located in § 63.9350 of subpart PPPPP.
§ 63.10(e)(4)	Additional CMS Reports	Reporting COMS data	No. Subpart PPPPP does not require COMS.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive.	Yes.
§ 63.11	Control Device Requirements	Requirements for flares	No. Subpart PPPPP does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	State authority to enforce standards.	Yes.
§ 63.13	Addresses of State Air Pollution Control Offices and EPA Regional Offices.	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporations by Reference	Test methods incorporated by reference.	Yes. ASTM D 6522–00 and ANSI/ASME PTC 19.10–1981 (incorporated by reference-See § 63.14).
§ 63.15	Availability of Information and Confidentiality.	Public and confidential information	Yes.

[FR Doc. 03–5521 Filed 5–23–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1537; MM Docket No. 02–13; RM–10357, RM–10493*]

Radio Broadcasting Services; Bunnell and Palm Coast, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a Notice of Proposed Rule Making, 67 FR 5961 (February 8, 2002) (''Notice''), this Report and Order allots Channel 254A to Palm Coast, Florida, and provides Palm Coast with its first local aural transmission service. This document also denies a mutually exclusive rulemaking request set forth in the Notice to allot the same channel to Bunnell, Florida. The Commission compared the merits of the two rulemaking proposals pursuant to the Commission's Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982), and preferred the Palm Coast rulemaking proposal. The coordinates for Channel 254A at Palm Coast are 29–29–38 North Latitude and 81–09–45 West Longitude. This allotment has a site restriction of 11 kilometers (6.8 miles) southeast of Palm Coast.

DATES: Effective June 23, 2003.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–13, adopted May 7, 2003, and released May 9, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893. facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCASTING SERVICES

■ 1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Palm Coast, Channel 254A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–13073 Filed 5–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1538; MB Docket No. 03–42, RM–10648; MB Docket No. 03–30, RM–10644; MB Docket No. 03–29, RM–10643; MM Docket No. 03–43, RM–10649]

Radio Broadcasting Services; Daisy, AR; Muldrow, OK; Rattan, OK and Trona, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants four proposals that allot new FM channels to Daisy, Arkansas; Trona, California; Muldrow, Oklahoma; and Rattan, Oklahoma. The Audio Division, at the request of Gray Media Corporation, allots Channel 293C3 at Daisy, Arkansas, as the community's first local aural transmission service. *See* 68 FR 10682, March 6, 2003. Channel 293C3 can be allotted to Daisy, Arkansas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.1 km (13.1 miles) northwest of Daisy. The coordinates for Channel 293C3 at Daisy, Arkansas, are 34–21–49 North Latitude and 93–54–48 West Longitude. A filing window for Channel 293C3 at Daisy, Arkansas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Effective June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 03–42, 03–30, 03–29, and 03–43, adopted May 7, 2003, and released May 9, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

The Audio Division further allots, at the request of Dana J. Puopolos, Channel 255A at Trona, California, as the community's first local aural transmission FM service. *See* 68 FR 7962, February 19, 2003. Channel 255A can be allotted to Trona, California, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 km (4.2 miles) southeast of Trona. The coordinates for Channel 255A at Trona, California, are 35–43–51 North Latitude and 117–18–28 West Longitude. A filing window for Channel 255A at Trona, California, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

The Audio Division further allots, at the request of David P. Garland, Channel 286A at Muldrow, Oklahoma, as the community's first local aural transmission service. *See* 68 FR 7962, February 19, 2003. Channel 286A can be allotted to Muldrow, Oklahoma, in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.02 km (6.52 miles) north of Muldrow. The coordinates for Channel 286A at Muldrow, Oklahoma, are 35–29–47 North Latitude and 94–36–04 West Longitude. A filing window for Channel 286A at Muldrow, Oklahoma, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

The Audio Division further allots, at the request of Gray Media Corporation, Channel 258A at Rattan, Oklahoma, as the community's first local aural transmission service. *See* 68 FR 10682, March 6, 2003. Channel 258A can be

allotted to Rattan, Oklahoma, in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.6 km (4.7 miles) south of Rattan. The coordinates for Channel 258A at Rattan, Oklahoma, are 34–07–58 North Latitude and 95–23–57 West Longitude. A filing window for Channel 258A at Rattan, Oklahoma, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Daisy, Channel 293C3.

■ 3. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Trona, Channel 255A.

■ 4. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Muldrow, Channel 286A, and Rattan, Channel 258A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–13072 Filed 5–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1224; MM Docket No. 00–69, RM–9850, RM–9945, RM–9946]

Radio Broadcasting Services; Bear Lake, Bellaire, Cheboygan, Ludington, Manistique, Onaway, Rapid River, Rogers City, and Walhalla, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule, denial.

SUMMARY: This document grants, in part, a Petition for Reconsideration filed Northern Radio of Michigan, Inc., and denies a Petition for Reconsideration by Fort Bend Broadcasting Company both directed to the *Report and Order* in this proceeding which denied a Counterproposal filed by the former licensee of Station WSRQ in this proceeding. Fort Bend Broadcasting Company is now the licensee of Station WSRQ. In that Counterproposal, the former licensee proposed the substitution of Channel 260C1 for Channel 260A at Bear Lake, Michigan, reallotment of Channel 260C1 to Bellaire, Michigan, and modification of the Station WSRQ license to specify operation on Channel 260C1 at Bellaire. In order to replace the loss of the sole local service at Bear Lake, the former licensee proposed a Channel 291A allotment as a replacement service. The *Report and Order* determined that there was no suitable site for the Channel 291A allotment at Bear Lake and denied the Counterproposal. *See* 67 FR 38206, June 3, 2002. Specifically, this document modifies the *Report and Order* to the extent of determining that there was a suitable transmitter site for a Channel 291A allotment at Bear Lake and a Channel 260C1 allotment at Bellaire would not comply with Section 73.315(a) of the Rules. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 00–69, adopted April 28, 2003, and released April 30, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualixint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–13071 Filed 5–23–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 101
Tuesday, May 27, 2003

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 990

RIN 3206–AJ97

General and Miscellaneous

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management proposes to remove its regulation concerning the submission of claims by preference eligibles to OPM and the recognition of representatives by OPM. The regulation is now obsolete.

DATES: Comments must be received on or before July 28, 2003.

ADDRESSES: Send, deliver or fax comments to Ellen E. Tunstall, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700; e-mail *employ@opm.gov;* FAX: (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: Mr. Raleigh M. Neville by telephone at (202) 606–0960; by TDD at (202) 418–3134; by fax at (202) 606–0390; or by e-mail at *rmnevill@opm.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this revision to part 990 is to eliminate the part because it is obsolete. OPM no longer adjudicates claims or appeals under sections 3502, 3503, or 7701 of title 5, United States Code. That appellate function was vested in the Merit Systems Protection Board, created by the Civil Service Reform Act of 1978. Accordingly, there is no basis to retain the provisions of part 990 in the Code of Federal Regulations.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

List of Subjects in 5 CFR Part 990

Administrative practice and procedure, Claims, Government employees, Veterans.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

Under the authority of 5 CFR chapter 1, OPM proposes to remove and reserve 5 CFR part 990 as follows:

PART 990—[Removed and Reserved]

1. Part 990 is removed and reserved.

[FR Doc. 03–13137 Filed 5–23–03; 8:45 am]

BILLING CODE 6325–38–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[WV060–6027b; FRL–7503–1]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; State of West Virginia; Control of Emissions from Existing Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the section 111(d)/129 negative declaration submitted by the West Virginia Department of Environmental Protection, Division of Air Quality (DAQ). The negative declaration certifies that small municipal waste combustion (MWC) units, which are subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within the State of West Virginia. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives 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 rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by June 26, 2003.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: April 30, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–13177 Filed 5–23–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1483, MB Docket No. 03–110, RM–10700]

Digital Television Broadcast Service; Conway, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by South Carolina Educational Television Commission (''SCETV''), licensee of noncommercial educational station WHMC–TV, NTSC channel *23, Conway, South Carolina. The SECTV

proposes the substitution of DTV channel *9 for station WHMC–TV's assigned DTV channel *58 at Conway. DTV Channel *9 can be allotted to Conway at reference coordinates 33–56–58 N. and 79–06–31 W. with a power of 20, a height above average terrain HAAT of 250.2 meters.

DATES: Comments must be filed on or before June 30, 2003, and reply comments on or before July 15, 2003.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). See *Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd D. Gray, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036 (Counsel for South Carolina Educational Television Commission).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–110, adopted April 30, 2003, and released May 9, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under South Carolina is amended by removing DTV channel *58 and adding DTV channel *9 at Conway.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–13074 Filed 5–23–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 68, No. 101

Tuesday, May 27, 2003

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

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Application for Permit, Non-Federal Commercial Use of Roads Restricted by Order

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the renewal, without change, of a previously approved information collection, Application for Permit, Non-Federal Commercial Use of Roads Restricted by Order FS–7700–40.

DATES: Comments must be received in writing on or before July 28, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Engineering Staff, RPC 5, USDA Forest Service, 1400 Independence Avenue, SW., Mail Stop 1101, Washington, DC 20250–1101.

Comments also may be submitted via facsimile to (703) 605–1542 or by e-mail to: *jbell01@fs.fed.us.*

The public may inspect comments received at Office of the Director of Engineering USDA Forest Service, 1605 Kent St., Room 500, Arlington, VA 22209 during normal business hours. Visitors are encouraged to call ahead to (703) 605–4646 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: John Bell, Engineering Staff, at (703) 605–4612. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Application for Permit, Non-Federal Commercial use of Roads Restricted by Order; FS–7700–40.

OMB Number: 0596–0016.

Expiration Date of Approval: 07/31/03.

Type of Request: Extension.

Abstract: Authority for Road Use Permits is derived from the National Forest Roads and Trails Act (16 U.S.C. 532–538, as amended). Detailed implementing regulations are contained in Title 36 of the Code of Federal Regulations, sections 212.5, 212.9, and 261.54. Forest Service policies implementing the regulations are found in Forest Service Manual section 7732. These statutes, regulations, and policies authorize the Forest Service to require commercial users of National Forest System roads to perform road maintenance or pay for road maintenance made necessary by their commercial vehicular use. They also allow the Forest Service to recover, the Federal investment in the development and maintenance of National Forest System roads from commercial users. Maintenance and cost recovery are accomplished by issuing a road use permit. Commercial use of National Forest System roads is prohibited without a road use permit under the authority of 36 CFR 261.54.

The following information will be requested from individuals, corporations, or organizations that apply for a permit to use National Forest system roads for non-Federal commercial use: (1) Name, address, and telephone number; (2) identification by Forest Service route number of roads to be used; (3) purpose of use; (4) use schedule; (5) and plans for future use.

The requestor submits the information to the Forest Supervisor or District Ranger responsible for the National Forest System roads on which commercial vehicular use is requested. Engineering personnel on the staff of the responsible National Forest System unit evaluate the information.

The information is used by the Forest Service to identify road maintenance required as a direct result of the applicant's vehicular traffic and to calculate the applicant's commensurate share of road maintenance. The information will also be used to calculate collections for recovery of past Federal investments in roads. These fees are then embodied in clauses in the road use permit issued to the applicant.

Estimate of Annual Burden: 15 minutes.

Type of Respondent: Commercial users of National Forest System roads.

Estimated Annual Number of Respondents: 2000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: May 16, 2003.

Abigail R. Kimbell,

Associate Deputy Chief, National Forest System.

[FR Doc. 03–13056 Filed 5–23–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes and Ochoco National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco National Forests Resource Advisory Committee will meet in Redmond, Oregon. The purpose of the meeting is

to review proposed projects and make recommendations under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held June 16 and 17, 2003, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the office of the Central Oregon Intergovernmental Council, 2363 SW Glacier Place, Redmond, Oregon 97756. Send written comments to Leslie Weldon, Designated Federal Official for the Deschutes and Ochoco Resource Advisory Committee, c/o Forest Service, USDA, Deschutes National Forest, 1645 Highway 20 East, Bend, OR 97701 or electronically to *lweldon@fs.fed.us*

FOR FURTHER INFORMATION CONTACT: Leslie Weldon, Designated Official, Deschutes National Forest, 541–383–5512.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Title II matters to the attention of the Committee may file written statements with the Committee staff before the meeting. A public input session will be provided and individuals who made written requests by June 10 will have the opportunity to address the Committee at the session.

Dated: May 19, 2003.

Leslie A.C. Weldon,

Designated Federal Official.

[FR Doc. 03–13110 Filed 5–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

John Day/Snake Resource Advisory Council, Hells Canyon Subgroup

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will meet on June 25–27, 2003 at the Pittsburg Admin Site on Snake River. The meeting will begin at 2 p.m. and continue until 5 p.m. the first day, day 2 will begin at 8 a.m. and will end at 5 p.m., and the final day will begin at 8 a.m. and end at noon. Public comment will be heard on June 25 at 1 at Pittsburg Launch.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kendall Clark, Area Ranger, USDA, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, OR 97828, 541–426–5501.

Dated: May 20, 2003.

Karyn L. Wood,

Forest Supervisor.

[FR Doc. 03–13111 Filed 5–23–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 11 a.m. and adjourn at 12:30 p.m. on Thursday, May 29, 2003. The purpose of the meeting is to follow-up on pending Oregon state legislation discussed at the last meeting. House Bill 2051, allowing local law enforcement to assume INS powers, and House Bill 2554, allowing local law enforcement to collect and maintain personal information on private citizens.

This conference call is available to the public through the following call-in number: 1–800–497–7709, access code: 16752964. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435), by 3 p.m. on Thursday, May 28, 2003. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC April 30, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–13183 Filed 5–21–03; 3:23 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Western Region State Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call among the ''Western Regional'' advisory committee to the U.S. Commission on Civil Rights in the Western Region (Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Texas and Washington) will convene at 2 p.m. (P.d.t.) and adjourn at 3 p.m., Friday, June 13, 2003. The purpose of the conference call is to offer suggestions on how advisory committees to the U.S. Commission on Civil Rights may engage in activities that are meaningful and measurable.

This conference call is available to the public through the following call-in number: 1–800–659–8290, access code number 17026197. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez of the Western Regional Office, (213) 894–3437, by 3 p.m. on Thursday, June 12, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, May 19, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–13184 Filed 5–23–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051503C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration, Commerce

ACTION: Issuance of Permit No:1417.

SUMMARY: Notice is hereby given of the following action regarding permits for takes of endangered and threatened species for the purposes of incidental take under the Endangered Species Act (ESA): NMFS has issued permit 1417 to Dr. Anne RudloeGulf Specimen Marine Laboratories, Inc.(GSML), Florida.

DATES: Effective May 15, 2003.

ADDRESSES: Requests for copies of the permit and environmental assessment should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Therese Conant (ph. 301–713–1401, fax 301–713–0376, e-mail *Therese.Conant@noaa.gov*), or Eric Hawk (ph. 727–570–5312, fax 727–570–5517, e-mail *Eric.Hawk@noaa.gov*).

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

NMFS published a notice of receipt and requested public comments on the GSML application for an incidental take permit on February 14, 2003 (68 FR 7505). No public comments were received.

Permit 1417 was issued on May 15, 2003, and will expire May 1, 2012. The permit will be reviewed and reauthorized on an annual basis. Permit 1417 authorizes the take of listed sea turtles incidental to otherwise lawful trawling activities in the Florida state waters of Gulf, Franklin and Wakulla Counties. Permit 1417 authorizes through May 1, 2012, an incidental take of up to a total of 3 sea turtles, all live, in any combination, of loggerhead, green, Kemp's ridley or leatherback sea turtles and up to 1 Gulf sturgeon, alive.

Dated: May 19, 2003.

David O'Brien,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–13157 Filed 5–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040703H]

Small Takes of Marine Mammals Incidental to Specified Activities; Coastal Commercial Fireworks Displays

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

ACTION: Notice of proposed incidental harassment authorization and notice of receipt of application; request for comments.

SUMMARY: NMFS has received a request from The Monterey Bay National Marine Sanctuary (MBNMS) for a one-year authorization to take small numbers of California sea lions and harbor seals by Level B harassment incidental to permitting professional fireworks displays within the Sanctuary in California waters, and an application for the promulgation of regulations governing the incidental take of marine mammals for the same activity over a five-year period. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the incidental harassment of small numbers of these two species and the application for regulations.

DATES: Comments and information must be received no later than June 26, 2003.

ADDRESSES: Comments on the proposed authorization and application should be addressed to Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application may be obtained by writing to this address or by telephoning one of the contacts listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Sarah Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117; or Christina Fahy, Southwest Regional Office, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

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

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

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

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

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

Summary of Request

On May 10, 2002, NMFS received an application from the MBNMS requesting a one-year Incidental Harassment

Authorization (IHA) under section 101(a)(5)(D) and regulations governing authorizations for a five-year period under section 101(a)(5)(A) of the MMPA for the possible harassment of harbor seals (*Phoca vitulina*) and California sea lions (*Zalophus californianus*) incidental to coastal fireworks displays resulting from permitting commercial companies to hold firework events. This document serves as Notice of NMFS' proposal to issue the one-year IHA and notice of receipt of the application for regulations.

The MBNMS adjoins 276 miles (444 km) or 25 percent of the central California coastline, and encompasses ocean waters from mean high tide to an average of 25 miles (40 km) offshore between Rocky Point in Marin County and Cambria in San Luis Obispo County. Fireworks displays have been conducted over current MBNMS waters for many years as part of national and community celebrations (such as Independence Day and municipal anniversaries), and to foster public use and enjoyment of the marine environment. The marine venue for this activity is the preferred setting for fireworks in central California in order to optimize public access and avoid the fire hazard associated with terrestrial display sites. Many fireworks displays occur at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

In 1992, the MBNMS was the first national marine sanctuary (NMS) to be designated along urban shorelines and has addressed many regulatory issues previously not encountered by the NMS program. Authorization of professional firework displays has been an issue that has required a steady refinement of policies and procedures toward this activity as more has been learned about its impacts to the environment.

Project Description

Since 1983, the MBNMS, a component of NOAA, has processed requests for the professional display of commercial-grade fireworks in the atmosphere and at ground or sea level, and these displays affect the Sanctuary. Sponsors of fireworks displays conducted in the MBNMS are required to obtain authorization due to discharge of spent pyrotechnic materials into NMS waters (see 15 CFR 922.132).

Professional pyrotechnic devices used in firework displays can be grouped into three general categories: aerial shells, low-level devices, and set piece displays. Aerial shells are launched from mortars using black powder charges to altitudes of 200 to 1000 ft (61 to 305 m) where they explode and ignite internal burst charges and incendiary chemicals. The largest commercial aerial shells used within MBNMS reach a maximum altitude of 1000 ft (305 m) above ground level with a bursting radius of approx. 850 ft (260 m). Most of the incendiary elements and part of the shell casing burn up in the atmosphere; however, portions of the casings and some internal structural components and chemical residue fall back to the ground or water, depending on wind conditions. The bulk of debris will fall to the surface within a 0.5 statute mile (0.8 km) radius of the launch site. A unique type of aerial shell is known as a ''salute'' shell, the purpose of which is to produce a loud percussive audible effect which sounds similar to cannonfire when detonated. Low-level devices are similar to over-the counter fireworks, which produce a fountain effect of light as burning particles shoot up out of a tube, producing a ball or trail of sparkling light. These fireworks are designed to produce effects between 0 and 200 ft (0 to 61 m) above ground level, and some may emit pulsing light patterns and/or sound effects. Some low-level devices may project small casings into the air, which will generally fall to the earth within a 600–ft (183–m) radius of the launch site. Set piece fireworks are mostly static in nature and remain close to the ground and are usually used in concert with low-level effects or aerial shells, typically employing bright flares, sparkling effects, and limited sound effects. These displays are designed to produce effects between 0 and 50 ft (0 to 15 m) above ground level. Depending on local conditions, fallout is generally confined within a 300–ft (91–m) radius of the launch site.

The MBNMS has issued 42 permits for professional fireworks displays since 1993, with a current average of 7 approvals per year. However, MBNMS projects that as many as 20 coastal displays per year may be conducted in, or adjacent to, MBNMS boundaries in the future. The number of displays will be limited to not more than 20 events per year in four specific areas along 276 mi (444 km) of coastline. In general, fireworks displays will not exceed 20 minutes in duration and will occur with an average frequency of less than or equal to once every two months within each of the four prescribed display areas. The vast majority (95 percent) of fireworks displays authorized in the MBNMS between 1993 and 2001 have been aerial displays that usually include simultaneous low-level displays. An average large display will last 20 minutes and include 700 aerial shells and 750 low-level effects. An average smaller display lasts approximately 7 minutes and includes 300 aerial shells and 550 low-level effects.

Initially, the MBNMS believed that it could minimize potential light, sound, and debris impacts to the NMS and marine mammals through permit conditions and has steadily refined conditions to limit the location, timing, and composition of professional fireworks events affecting the MBNMS. However, due to observations over the past several years and consultation with NMFS' Southwest Region, it appears that some fireworks displays result in incidental take of marine mammals by Level B harassment. NMFS believes that the nature of the incidental harassment will be the short-term flushing and evacuation of non-breeding haulout sites by California sea lions and Pacific harbor seals.

Description of Habitat and Marine Mammals Affected by the Activity

The Monterey Bay area is located in the Oregonian province subdivision of the Eastern Pacific Boreal Region. The six types of habitats found in the bay area are: (1) submarine canyon habitat, (2) nearshore sublittoral habitat, (3) rocky intertidal habitat, (4) sandy beach intertidal habitat, (5) kelp forest habitat, and (6) estuarine/slough habitat. Monterey Bay supports a wide array of temperate cold-water species with occasional influxes of warm-water species, and this species diversity is directly related to the diversity of habitats. A description of MBNMS and its associated marine mammals can be found in the MBNMS application and Fireworks Assessment Report (2001), which are available upon request (see **ADDRESSES**).

Marine Mammal Impacts

The species of marine mammals that may be present in a fireworks display acute impact area (the area where sound, light, and debris effects have direct impacts on marine organisms and habitats) include the California sea lion, harbor seal, bottlenose dolphin (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), California gray whale (*Eschrichtius robustus*), and Southern sea otters (*Enhydra lutris neries*).

Marine mammals can be impacted by fireworks displays in three ways: light, sound, and debris. Pyrotechnic devices that operate at higher altitudes are more likely to have a larger impact area (such as aerial shells), while ground and low-level devices have more confined effects. Possible direct impacts to

marine mammals include, but are not limited to, immediate physical and physiological impacts such as abrupt changes in behavior, flight response, diving, evading, flushing, cessation of feeding, and physical impairment or mortality.

MBNMS staff have recovered uncharred casing remnants on ocean waters immediately after marine displays, including cardboard cylinders, disks, paper, plastic pieces, aluminum foil, cotton string, and even whole unexploded shells (duds or misfires). The debris and chemical residue fallout area is determined by wind conditions, weather, and other local variations. MBNMS does not expect this debris to impact marine mammals, because permit conditions and mitigation measures proposed by the Sanctuary will ensure that the debris resulting from fireworks displays will not alter ocean areas or haul-out sites used by California sea lions and harbor seals.

The applicant requests an authorization for incidental takes by Level B harassment only of California sea lions and harbor seals, which are the only two marine mammal species under NMFS' jurisdiction likely to be impacted by fireworks displays within the Sanctuary. The remaining species of marine mammals, though they may be present in the acute impact area, are not likely to be taken by harassment or any other type of take.

California sea lions primarily use the Central California area to feed during the non-breeding season. Following the breeding season on the Channel Islands, most adult and sub-adult males migrate northward to central and northern California and to the Pacific Northwest, while most females and young animals either remain on or near the breeding grounds throughout the year or move southward or northward, as far as Monterey Bay. A minimum of 12,000 sea lions are probably present at any given time within the entire MBNMS region. Number of sea lions peak in the Monterey Bay area in fall and winter and are at their lowest in spring and early summer.

Harbor seals are distributed throughout the west coast of California, and are residents in the MBNMS throughout the year, occurring mainly near the coast. In general, they do not migrate, preferring instead to forage within several miles of their haul-out sites. Within the Sanctuary, harbor seals often move substantial distances to foraging areas each night. Pupping within MBNMS occurs primarily during March and April followed by a molt during May and June.

Past monitoring efforts by the MBNMS staff have identified only a short-term harassment of animals by fireworks displays, with the primary causes of disturbance being light flashes and sound effects from exploding fireworks. Typical decibel levels for displays containing no ''salute'' effects range from 70 to 78 dB. Studies conducted at Vandenberg Air Force Base (VAFB) to determine responses by California pinnipeds to the effects of periodic rocket launches (which have light and sound effects similar to that of pyrotechnic displays but with much greater intensity) have demonstrated the temporary flushing of animals from haul out sites, their eventual return, and no detectable changes in the seals' hearing sensitivity as a result. Incidental takes of marine mammals are limited to Level B harassment of California sea lions and harbor seals due to the temporary evacuation of usual and accustomed haul-out sites. Sea lions have been observed evacuating haul-out areas upon initial detonation of fireworks and returning to the haul-out sites within 4 to 15 hours following the end of the fireworks display. Harbor seals have been seen to remain in the water after initial fireworks detonation around the haul-out site. Sea lions in general are more tolerant to noise and visual disturbances compared to harbor seals - adult sea lions have likely habituated to many sources of disturbance and are, therefore, tolerant of nearby human activities. For both pinniped species, pups and juveniles are more likely to be harassed when exposed to disturbance compared to older animals. Please refer to MBNMS Fireworks Assessment Report (2001) and Fireworks Guidelines (2002) for information on quantitative survey results, related research studies, and observations made by MBNMS staff as well as details on how exploding fireworks impact marine mammals and how animals respond (see **ADDRESSES**).

However, because of mitigation measures proposed, the MBNMS expects that only Level B incidental harassment may occur incidental to coastal fireworks displays and that these events would result in no detectable impact on marine mammal species or stocks or on their habitats. There is no anticipated impact on the MBNMS or on the availability of the species or stocks for subsistence uses because there is no subsistence harvest of marine mammals in California.

Number of animals taken by Level B harassment during fireworks displays is expected to vary due to factors such as tidal stage, seasonal shifting prey stocks, climatic phenomenon (such as El Nino events), and the number, timing, and location of future displays. At all four designated display sites combined, twenty fireworks events per year could harass an average annual total of 2,630 California sea lions (6,170 maximum) and an average annual total of 302 harbor seals (1,065 maximum) within the MBNMS. Please refer to the MBNMS Fireworks Assessment Report (2001) for further information regarding estimated incidental take numbers by display area and fireworks events (see **ADDRESSES**).

Mitigation

The MBNMS has worked with the United States Fish and Wildlife Service (USFWS) and NMFS Southwest Region to craft a set of permitting guidelines designed to minimize fireworks impacts in order to protect MBNMS resources, as well as outline the locations, frequency, and conditions under which the MBNMS will authorize marine fireworks displays. The MBNMS plans to retain these permitting requirements and assess displays on a case-by-case basis, implementing general and special restrictions unique to each fireworks event as necessary.

The fireworks guidelines are designed to prevent an incremental proliferation of fireworks displays and disturbance throughout the MBNMS and minimize area of impact by confining displays to primary traditional use areas. Traditional display areas are located adjacent to urban centers where wildlife has often acclimated to human disturbances, such as low-flying aircraft, emergency vehicles, unleashed pets, beach combing, recreational and commercial fishing, surfing, swimming, boating, and personal watercraft operations. Future permitted fireworks displays will be confined to four prescribed areas within the MBNMS and prohibited from the remaining 95% of coastal areas. The conditional display areas are located at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek). An equal number of private and public displays will be considered for authorization within each display area. Remote areas and locations where professional fireworks have not traditionally been conducted will not be considered for fireworks approval. In general, fireworks displays will not exceed 20 minutes in duration and will occur with an average frequency of less than or equal to one display every two months within each of four prescribed display areas. Please refer to the MBNMS Fireworks Assessment Report (2001) and Fireworks Guidelines (2002) for general information on frequency and duration of typical fireworks displays within the

Sanctuary, strategies for minimizing impacts, as well as maps and detailed descriptions of prohibited and conditional display areas (see **ADDRESSES**).

In addition, there is an annual limit of 20 displays along the entire Sanctuary coastline to prevent cumulative adverse environmental effects from fireworks. The MBNMS intends on instituting a 5–year permit system for displays that will occur annually at a fixed location and in a consistent manner, such as municipal Independence Day shows. Also, MBNMS has established a seasonal prohibition to safeguard pinniped reproductive periods. Fireworks events will not be authorized between March 1 and June 30 of each year, since this period is the primary reproductive season for many marine species. After considering the factors within each display application, other permit conditions that may be deemed appropriate are to limit the number of aerial ''salute'' effects used, require the removal of plastic labels and wrappings, and to require post-show reporting and cleanup.

The MBNMS guidelines effectively remove fireworks impacts from 95 percent of the Sanctuary's coastal areas, place an annual quota and multiple permit conditions on the displays authorized within the remaining 5 percent of the coast, and impose a seasonal prohibition on all fireworks displays within the MBNMS. The guidelines were developed to minimize the impacts of fireworks activities on protected species and habitats, and they have been well received by local fireworks sponsors, who have pledged their cooperation in protecting MBNMS resources. Please refer to the MBNMS Fireworks Guidelines (2002) for details on permit conditions and regulations (see **ADDRESSES**).

Monitoring

Of all the past authorized fireworks display sites within the MBNMS, the City of Monterey site has received the highest level of monitoring effort. The City of Monterey has hosted a marine fireworks display each July 4th since 1988, which is the longest running and largest annual commercial fireworks display within the MBNMS. Because the Monterey Breakwater and natural rock formations near the display area serve as regular haul-out sites for California sea lions and harbor seals, the Monterey site has been studied and censused by government and academic researchers for over 20 years. Consequently, the Monterey site has the best background data available for assessing status and trends of key marine mammal populations relative to annual fireworks displays. For this reason, the MBNMS proposes that Monterey be monitored as an indicator site to further determine how local California sea lion and harbor seal distribution and abundance are affected by an annual fireworks display.

The MBNMS has monitored commercial fireworks displays for potential impacts to marine life and habitats since 1993. The Sanctuary will conduct a visual census of the Monterey Breakwater and rocks within Monterey Harbor on July 4 and July 5 each year to determine annual abundance, demographic response patterns, and departure and return rates for California sea lions and harbor seals relative to the July 4 fireworks display. Data will be collected by observers aboard kayaks or small boats and from ground stations (where appropriate), using binoculars, counters, and data sheets to census animals. The pre- and post- fireworks census data will be analyzed to identify any significant temporal changes in abundance and distribution that might be attributed to impacts from the annual fireworks display. The data will also be added to past research statistics on the abundance and distribution of stocks at Monterey Harbor.

Reporting

A draft final report must be submitted to NMFS within 60 days after the conclusion of the annual fireworks permit season. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Endangered Species Act

Under section 7 of the Endangered Species Act (ESA), NOAA will consult with the U.S. Fish & Wildlife Service (USFWS) on the proposed issuance of an IHA regarding possible fireworks impacts to sea otters within the MBNMS. Consultation will be concluded prior to the issuance of an IHA.

National Environmental Policy Act

NOAA prepared a Final Environmental Impact Statement and Master Plan for the MBNMS (FEIS) in June 1992. That document is available for viewing at on the internet (see Electronic Access). NMFS is reviewing this FEIS to determine whether supplemental documentation is needed prior to making a final determination on issuance of an IHA.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of fireworks displays, as described in this document and in the application for an IHA, would result in no more than Level B harassment of small numbers of California sea lions and harbor seals. The effects of coastal fireworks displays will be limited to short term and localized changes in behavior involving relatively small numbers of pinnipeds. Although seals and sea lions may modify their behavior, including temporarily vacating haulouts to avoid the sight and sound of commercial fireworks, these fireworks are expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to issue a 1–year IHA to the MBNMS for the potential harassment of small numbers of harbor seals and California sea lions incidental to permitted coastal fireworks displays within the MBNMS, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed IHA and the application for regulations request (see **ADDRESSES**).

Electronic Access

Additional information on harbor seals and California sea lions found in Central California waters can be found in Forney et al. (2002), which is available online at:

http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/individual__sars.html.

The MBNMS's FEIS is also available online at:

http://www.mbnms.nos.noaa.gov/intro/mbnms__eis/welcome.html.

Dated: May 16, 2003.

Donna Wieting,

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

[FR Doc. 03–13156 Filed 5–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052003D]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Allocation Committee (Committee) will hold a working meeting, which is open to the public.

DATES: The Committee meeting will be held Tuesday, June 10, 2003 from 8 a.m. until business for the day is completed. The Committee meeting will reconvene on Wednesday, June 11, 2003 from 8 a.m. until business is completed.

ADDRESSES: The Committee meeting will be held at the Embassy Suites Portland Airport, The Firs I-II, 7900 NE 82nd Avenue, Portland, OR 97220; telephone: (503) 460–3000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Fishery Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Committee meeting is to develop options for allocations and other management measures for the 2004 Pacific Coast groundfish fishery. In addition, the Committee will evaluate current catch levels of overfished groundfish species and may propose inseason adjustments. The Committee will discuss the types of provisions that may be necessary to prevent further overfishing, to reduce bycatch of overfished species in the various groundfish fisheries, and to reduce bycatch in nongroundfish fisheries. The Committee will also review new stock assessments and rebuilding analyses for groundfish species. No management actions will be decided by the Committee. The Committee's role will be development of recommendations for consideration by the Pacific Fishery Management Council at its June meeting in Foster City, CA.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 21, 2003.

Richard W. Surdi,

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

[FR Doc. 03–13158 Filed 5–23–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

May 20, 2003.

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

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

EFFECTIVE DATE: May 28, 2003.

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

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being adjusted for swing, special shift, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 65339, published on October 24, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 20, 2003.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 18, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on May 28, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	2,791,914 dozen.
341	4,187,829 dozen.
342/642	819,020 dozen.
351/651	1,364,973 dozen.
638/639	2,875,101 dozen.
641	1,065,654 dozen.
647/648	3,052,747 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

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

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–13162 Filed 5–23–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

May 20, 2003.

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

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

EFFECTIVE DATE: May 28, 2003.

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

SUPPLEMENTARY INFORMATION:

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

The current limit for Categories 638/639 is being decreased for the cancellation of special shift from Categories 338/339, which increases that limit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63627, published on October 15, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 20, 2003.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on May 28, 2003, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Levels in Group I	
338/339	1,897,543 dozen.
638/639	2,430,354 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

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

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–13163 Filed 5–23–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

May 20, 2003.

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

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

EFFECTIVE DATE: May 28, 2003.

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

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being adjusted for swing and special swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63631, published on October 15, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 20, 2003.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man–made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on May 28, 2003, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal:

Category	Adjusted twelve-month limit [1]
341	1,144,749 dozen.
347/348	1,172,618 dozen.
641	438,381 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

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

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–13164 Filed 5–23–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

May 20, 2003.

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

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

EFFECTIVE DATE: May 28, 2003.

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

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being adjusted for carryover, recrediting unused carryforward, swing, special swing, and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on December 18, 2001). Also see 67 FR 68572, published on November 12, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 20, 2003.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on May 28, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
219	14,779,190 square meters.
226/313	177,762,140 square meters.
237	300,884 dozen.
239pt. [2]	2,482,217 kilograms.
314	10,859,214 square meters.
315	128,607,717 square meters.
317/617	58,355,596 square meters.
331pt./631pt. [3]	1,493,231 dozen pairs.
334/634	700,733 dozen.
335/635	791,127 dozen.
336/636	887,757 dozen.
338	8,975,421 dozen.
339	2,999,139 dozen.
340/640	1,476,854 dozen of which not more than 553,819 dozen shall be in Categories 340–D/640–D [4].
341/641	1,694,380 dozen.
342/642	671,173 dozen.
347/348	1,750,737 dozen.
351/651	824,213 dozen.
352/652	1,791,771 dozen.
359–C/659–C [5]	1,164,554 kilograms.
360	9,392,540 numbers.
361	10,921,556 numbers.
363	72,085,617 numbers.
369–S [6]	1,264,224 kilograms.
613/614	39,960,241 square meters.
615	42,510,887 square meters.
625/626/627/628/629	104,199,548 square meters of which not more than 64,166,786 square meters shall be in Category 625; not more than 67,816,075 square meters shall be in Category 626; not more than 67,816,075 square meters shall be in Category 627; not more than 14,030,913 square meters shall be in Category 628; and not more than 67,816,075 square meters shall be in Category 629.
638/639	417,171 dozen.
647/648	1,944,160 dozen.
666–P [7]	1,285,911 kilograms.
666–S [8]	6,807,768 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[4] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[5] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[6] Category 369–S: only HTS number 6307.10.2005.

[7] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[8] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

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

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–13165 Filed 5–23–03 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before July 28, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 20, 2003.

John D. Tressler,

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

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: 21st Century Community Learning Centers Annual Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,125.

Burden Hours: 9,000.

Abstract: 21st Century Community Learning Center grantees must annually submit the report so the Department can evaluate the performance of grantees prior to awarding continuation grants and to assess a grantee's prior experience at the end of each budget period. An extension of the currently approved collection is necessary to collect information through the grantees' final budget period (2004).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2277. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–13132 Filed 5–23–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 26, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 19, 2003.

John D. Tressler,

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

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Student Aid Internet Gateway (SAIG) Enrollment Document (JS).

Frequency: On Occasion.

Affected Public: Not-for-profit institutions (primary), Businesses or other for-profit, State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 6902.

Burden Hours: 6902.

Abstract: Enrollment in SAIG allows eligible entities to exchange Title IV information electronically with the Department of Education. Users are able to receive, transmit, view and update student financial aid data via SAIG. Eligible respondents include postsecondary schools that participate in Federal student financial aid programs, financial aid servicers, state and guaranty agencies, lenders, and need analysis servicers.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the

''Browse Pending Collections'' link and by clicking on link number 2196. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: Revision of a currently approved collection.

Title: FIPSE Comprehensive Program Grant Application (1890–0001) (JS).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 1650.

Burden Hours: 19500.

Abstract: The Comprehensive program is a discretionary grant award program of the fund for the Improvement of Postsecondary Education (FIPSE). Applications are submitted in two stages—preliminary and final. The program supports innovative reform projects that hold promise as models for the resolution of important issues and problems in postsecondary education. Grants made under this program are expected to contribute new information in educational practice that can be shared with others. As its name suggests, the Comprehensive program may support activities in any discipline, program, or student service. Nonprofit institutions and organizations offering postsecondary education programs are eligible applicants. The Comprehensive Program has established a record of meaningful and lasting improvement to access, retention, and quality in postsecondary education.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2280. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–13133 Filed 5–23–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.323A]

Special Education: State Program Improvement Grants Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The purpose of this program, authorized under the Individuals with Disabilities Education Act (IDEA) Amendments of 1997, is to assist State educational agencies and their partners referred to in section 652(b) of IDEA with reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

Eligible Applicants: A State educational agency of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) that is not a current grantee.

Applications Available: May 27, 2003.

Deadline for Transmittal of Applications: July 11, 2003.

Deadline for Intergovernmental Review: September 12, 2003.

Estimated Available Funds: $11 million.

Estimated Range of Awards: Awards will be not less than $530,000, nor more than $2,199,000 in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and not less than $84,800, in the case of an outlying area. Pursuant to subsection 655(b) the Secretary has increased the maximum award amount above the maximum award amount for the FY 2002 competition to account for inflation.

Note: Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

We will set the amount of each grant after considering:

(1) The amount of funds available for making the grants;

(2) The relative population of the State or outlying area; and

(3) The types of activities proposed by the State or outlying area.

Estimated Average Size of Awards: $1,000,000.

Estimated Number of Awards: 10.

Note: The Department of Education is not bound by the estimated size and number of awards in this notice.

Project Period: Not less than one year and not more than five years.

Page Limits: Part III of each application submitted under a priority in this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit part III to the equivalent of no more than 100 pages, using the following standards:

- A ''page'' is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters per inch.

The page limit does not apply to part I—the cover sheet; part II—the budget

section, including the narrative budget justification; part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in part III.

We will reject without consideration or evaluation any application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) the selection criteria for this program are drawn from EDGAR in 34 CFR 75.210.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Description of Program

The statutory authorization, purpose of this program and the application requirements that apply to this competition are set out in sections 651–655 of the IDEA.

General Requirements

(a) Projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (*see* section 606 of IDEA);

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of IDEA); and

(c) Projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

Absolute Priority: Under section 653 and 34 CFR 75.105(c)(3), we will give an absolute preference to applications that meet the following priority. We will fund under this competition only those applications that meet this absolute priority.

This priority supports projects that assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

State Improvement Plan. Applicants must submit a State improvement plan that—

(a) Is integrated, to the maximum extent possible, with State plans under the Elementary and Secondary Education Act of 1965 and the Rehabilitation Act of 1973, if appropriate;

(b) Identifies those critical aspects of early intervention, general education, and special education programs (including professional development, based on an assessment of State and local needs) that must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(16) of IDEA. Specifically, applicants must include:

(1) An analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State, including—

(i) Their performance on State assessments and other performance indicators established for all children, including drop-out rates and graduation rates;

(ii) Their participation in postsecondary education and employment; and

(iii) How their performance on the assessments and indicators compares to that of non-disabled children;

(2) An analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum:

(i) The number of personnel providing special education and related services; and

(ii) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in paragraph (b)(2)(i) with temporary certification), and on the extent of certification or retraining necessary to eliminate those shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs;

(3) An analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and

(4) An analysis of other information, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities;

(c) Describes a partnership agreement that—

(1) Specifies—

(i) The nature and extent of the partnership among the State educational agency, local educational agencies, and other State agencies involved in, or concerned with, the education of children with disabilities, and the respective roles of each member of the partnership; and

(ii) How those agencies will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of these persons and organizations; and

(2) Is in effect for the period of the grant;

(d) Describes how grant funds will be used in undertaking the systemic-change activities, and the amount and nature of funds from any other sources, including funds under part B of the Act retained for use at the State level under sections 611(f) and 619(d) of the Act, that will be committed to the systemic-change activities;

(e) Describes the strategies the State will use to address the needs identified under paragraph (b), including how it will—

(1) Change State policies and procedures to address systemic barriers to improving results for children with disabilities;

(2) Hold local educational agencies and schools accountable for educational progress of children with disabilities;

(3) Provide technical assistance to local educational agencies and schools to improve results for children with disabilities;

(4) Address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities, including a description of how it will—

(i) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities, including how the State will work with other States on common certification criteria;

(ii) Prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

(iii) Work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop

the capacity to support quality professional development programs that meet State and local needs;

(iv) Work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of a program of preparation;

(v) Work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;

(vi) Enhance the ability of teachers and others to use strategies, like behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

(vii) Acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State, if appropriate, will adopt promising practices, materials, and technology;

(viii) Recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education, and related services;

(ix) Integrate its plan, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and

(x) Provide for the joint training of parents and special education, related services, and general education personnel;

(5) Address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel;

(6) Disseminate results of the local capacity-building and improvement projects funded under section 611(f)(4) of the Act;

(7) Address improving results for children with disabilities in the geographic areas of greatest need;

(8) Assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective; and

(9) Coordinate its improvement strategies with public and private sector resources.

Required partners. Applicants must:

(a) Establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities; and

(b) Work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including—

(1) The Governor;

(2) Parents of children with disabilities;

(3) Parents of nondisabled children;

(4) Individuals with disabilities;

(5) Organizations representing individuals with disabilities and their parents, such as the parent training and information centers;

(6) Community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(7) The lead State agency for part C of the Act;

(8) General and special education teachers, and early intervention personnel;

(9) The State advisory panel established under part B of the Act;

(10) The State interagency coordinating council established under part C of the Act; and

(11) Institutions of higher education within the State.

Optional partners. A partnership established by applicants may also include—

(a) Individuals knowledgeable about vocational education;

(b) The State agency for higher education;

(c) The State vocational rehabilitation agency;

(d) Public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice; and

(e) Other individuals.

Reporting procedures. Each State educational agency that receives a grant must submit performance reports to the Secretary pursuant to a schedule to be determined by the Secretary, but not more frequently than annually. The reports must describe the progress of the State in meeting the performance goals established under section 612(a)(16) of the Act, analyze the effectiveness of the State's strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance. Grantees must also provide information required under EDGAR at 34 CFR 80.40.

Use of funds. Each State educational agency that receives a State Improvement Grant under this program—

(a) May use grant funds to carry out any activities that are described in the State's application and that are consistent with the purpose of this program;

(b) Shall, consistent with its partnership agreement established under the grant, award contracts or subgrants to local educational agencies, institutions of higher education, and parent training and information centers, as appropriate, to carry out its State improvement plan; and

(c) May award contracts and subgrants to other public and private entities, including the lead agency under part C of the Act, to carry out that plan;

(d)(1) Shall use not less than 75 percent of the funds it receives under the grant for any fiscal year—

(i) To ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children; or

(ii) To work with other States on common certification criteria; or

(2) Shall use not less than 50 percent of those funds for these purposes, if the State demonstrates to the Secretary's satisfaction that it has the personnel described in paragraph (d)(1).

Waiver of Proposed Rulemaking: It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED-Pubs (1–877–433–7827). FAX: 301–470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*, or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA 84.323A.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Special Education—State Program Improvement Grants Program—CFDA No. 84.323A is one of the programs included in the pilot project. If you are an applicant under this program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Special Education—State Program Improvement Grants Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail or hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension.

To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—State Program Improvement Grants Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (*see* Parity Guidelines between Paper and Electronic Applications) in the application package.

FOR FURTHER INFORMATION CONTACT: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

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

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

Program Authority: 20 U.S.C. 1405, 1461, 1472, 1474, and 1487.

Dated: May 20, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–13181 Filed 5–23–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Extension of Public Comment Period for the Revised Draft Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, WA

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: In response to requests for extension of the public comment period

for the Revised Draft Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, Richland, Washington, the U.S. Department of Energy has extended the public comment period by 15 days. The comment period began April 11, 2003, and will now run until June 11, 2003 instead of May 27, 2003.

The Revised Draft EIS evaluates the potential environmental impacts associated with ongoing activities of the Hanford Site Solid Waste Program, disposal of immobilized low-activity wastes from Hanford tank waste processing, and reasonably foreseeable treatment, storage and disposal facilities and activities.

FOR FURTHER INFORMATION CONTACT: To request information about the revised draft EIS or to be placed on the EIS distribution list, contact: Mr. Michael S. Collins, HSW EIS Document Manager, Richland Operations Office, U.S. Department of Energy, A6–38, Post Office Box 550, Richland, Washington, 99352–0550. Telephone and voice mail: (800) 426–4914. Fax: (509) 372–1926. Electronic mail: *hsweis@rl.gov.*

For general information about the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119. Fax: (202) 586–7031. Telephone: (202) 586–4600. Voice mail: (800) 472–2756.

Issued in Richland, Washington, on this 19th day of May 2003.

Keith A. Klein,

Manager, Richland Operations Office.

[FR Doc. 03–13166 Filed 5–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Payments in Lieu of Taxes Under the Atomic Energy Act of 1954; Guidelines

AGENCY: Office of Management, Budget and Evaluation/Chief Financial Officer, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE publishes policy guidelines it uses to guide decisions with regard to applications by State or local jurisdictions for discretionary payments in lieu of taxes with regard to eligible real property that is not subject to State and local taxation because it is owned by the United States, is under the custody and control of DOE, and is used to carry out activities authorized by the Atomic Energy Act of 1954, as amended.

EFFECTIVE DATE: The guidelines in this Notice are effective May 27, 2003.

FOR FURTHER INFORMATION: You may contact Mary L. Rosicky, ME–11, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–9354, e-mail, *marylou.rosicky@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Atomic Energy Act of 1954 (AEA), DOE carries out a variety of national defense and energy research and development activities at sites that are located in various States and are owned by the United States Government. Section 168 of the AEA (42 U.S.C. 2208) authorizes DOE to provide discretionary payments to State or local government authorities where AEA sites are located. These payments are in lieu of real property taxes that State and local jurisdictions may not collect because they are precluded by the United States Constitution from taxing real property owned by the Federal Government. These discretionary financial assistance payments in lieu of taxes, which are subject to the availability of funds, are commonly referred to as ''PILT payments''.

In the past, DOE has decided, on a case-by-case basis, whether an application for PILT assistance should be approved and, if so, how much the annual PILT payments should be. In making such decisions, DOE has employed a policy consisting largely of internal procedures, application content criteria, evaluation criteria, and standard provisions for assistance agreements. The application content and evaluation criteria have either implemented requirements of section 168 or have been the result of case-by-case decisions.

The purpose of this notice is to state publicly, and without significant change, the policies regarding PILT payments that DOE has been applying to PILT applicants and recipients, and intends to continue to apply, on a case-by-case basis.

The Secretary of Energy has approved issuance of this notice.

Issued in Washington, DC on May 8, 2003.

James T. Campbell,

Acting Director, Office of Management, Budget and Evaluation/Acting Chief Financial Officer.

Guidelines for Payments in Lieu of Taxes Under the Atomic Energy Act of 1954

I. Purpose and Scope

These guidelines set forth policies that DOE intends to apply when making case-by-case determinations on applications for payments in lieu of taxes (PILT) under section 168 of the Atomic Energy Act of 1954 (42 U.S.C. 2208). PILT is discretionary financial assistance that DOE may provide subject to the availability of funds. PILT is not an entitlement.

II. Authority

These guidelines are authorized by sections 161 and 168 of the Atomic Energy Act of 1954 (42 U.S.C. 2201, 2208).

III. Applicability

A. These guidelines apply to any DOE facility (including facilities of the National Nuclear Security Administration) located on real property owned by the United States, under the custody and control of DOE, and at which activities authorized or required under the Atomic Energy Act of 1954 are carried on, if the real property was subject to State and local taxation immediately prior to acquisition by the United States.

B. These guidelines do not affect existing agreements between DOE and State or local governments that preclude PILT on all or part of real property under custody and control of DOE.

C. These guidelines apply to an initial application for PILT that is submitted to DOE, and to an application or request to change the basis for or amount of a PILT payment under an existing agreement between DOE and a State or local government. DOE will treat any application or request to change the basis for or amount of a PILT payment under an existing agreement as an initial application under these guidelines.

IV. Definitions

As used in these guidelines:

A. ''Condition In Which It Was Acquired'' means the physical description, definition, and real property classification used to determine the assessed valuation of the real property in the last year that such property was on the State or local tax rolls prior to acquisition by the Federal Government.

B. ''Revised PILT Payment'' means a change in PILT payment that is based on a reclassification of the property to a new tax classification or category, an increase or decrease in the amount of land used to calculate the PILT payment, or other significant change in the method of calculating the PILT payment. ''Revised PILT Payment'' does not mean a PILT payment that is changed solely because of Taxing Authority jurisdiction-wide adjustments to tax assessments or to tax rates.

C. ''Taxing Authority'' means an entity empowered under State law to render a separate tax bill based on the value of real property.

V. Application Content Criteria

In an application for PILT, DOE expects to see the following information:

A. Basis for calculating the PILT amount being sought;

B. Description of the real property, including non-Federal Government improvements existing at the time the Federal Government acquired the property and which still exist;

C. Date that the Federal Government acquired the real property and the date the real property was removed from the tax rolls because of its acquisition by the Federal Government;

D. Classification of real property by the Taxing Authority (if applicable) and zoning of such property in the last year it was on the tax rolls;

E. Tax rate, assessment, and total PILT payment proposed, net of applicable exclusions or offsets under these guidelines;

F. Current tax rate and assessment placed on real property with the same zoning and/or use classification, as reported by the Taxing Authority under paragraph V.D. of these guidelines;

G. Other Federal Government payments received or expected to be received by the applicant Taxing Authority which may duplicate payments made under these guidelines for the same identifiable, discrete purpose and use by the Taxing Authority; and

H. A statement that the Taxing Authority agrees to execute and deliver to DOE a valid and binding release or settlement of claims for payments related to DOE's land or property.

VI. Evaluation Criteria

On a case-by-case basis, DOE plans to evaluate applications for PILT, and to calculate PILT payments, using the following guidelines:

A. The real property for which a PILT payment is sought currently must be used for activities authorized by the Atomic Energy Act of 1954;

B. The real property must have been on the tax rolls of the applicant Taxing Authority immediately prior to acquisition of the real property by the Federal Government;

C. DOE will not make PILT payments for any tax year prior to the tax year during which a complete application for PILT is filed with DOE;

D. Approval of applications for PILT, as well as payments pursuant to an approved application, are subject to the availability of funds, and amounts available for PILT are subject to the same reductions or other budgetary restrictions that may be applied to other DOE programs;

E. DOE will not make PILT payments that exceed the tax payment to which the Taxing Authority would be entitled if the real property had remained on the tax rolls in the Condition in Which It Was Acquired;

F. Property value for real property addressed in an initial application or an application for a Revised PILT Payment will be determined on the basis of the highest and best use of the real property in the same zoning classification and Taxing Authority-assigned-use classification at the time the real property was acquired by the Federal Government. The property value will exclude the value of improvements made after the Federal Government acquired the real property. The current tax rate and assessment values will be the same as those applied to comparable properties with the same use and/or tax classification in the jurisdiction of the Taxing Authority;

G. In calculating PILT payments, DOE will deduct from a PILT payment otherwise calculated by the applicant Taxing Authority an amount equal to any payment(s) by the Federal Government that will be used by the State or local jurisdiction for the same identifiable, discrete purpose; and

H. Such other relevant criteria as DOE deems appropriate in light of the information provided in the application for PILT. In order for DOE to approve or pay a Revised PILT Payment, a Taxing Authority must submit a complete application as if the Taxing Authority were a new applicant for PILT assistance, and all aspects of the application will be evaluated as if the Taxing Authority were a new applicant for such assistance.

VII. Intergovernmental Assistance Agreement

A. Before a Taxing Authority may receive PILT payments from DOE, the Taxing Authority's application for PILT under these guidelines must be approved in writing by the DOE Chief Financial Officer who may not delegate this authority.

B. Upon approval of an application for PILT by the DOE Chief Financial Officer and satisfaction of any conditions attached to such approval, and prior to making any PILT payments to the relevant Taxing Authority applicant, DOE will enter into an intergovernmental assistance agreement with the applicant Taxing Authority that is satisfactory to DOE under these guidelines.

C. The standard terms of such an agreement should include, but are not limited to, provisions stating:

1. That the agreement does not apply to any tax year prior to the tax year in which a complete application for PILT was filed with DOE;

2. The date that the first payment is due;

3. That PILT payments are subject to the availability of funds;

4. That PILT payments are subject to legislative or administrative reductions in funding levels;

5. That PILT payments are subject to suspension during the pendency of any lawsuit filed by the Taxing Authority which seeks from the Federal Government any real property taxes or their equivalent; and

6. That PILT is not an entitlement, and, accordingly, nothing in the agreement and no conduct of DOE under or relating to the agreement shall be interpreted to preclude or place any limitations or conditions on the Secretary of Energy's exercise of his discretion under section 168 of the Atomic Energy Act of 1954, including his discretion to unilaterally terminate the agreement with reasonable notice.

[FR Doc. 03–13141 Filed 5–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EC03–89–000, et al.]

Federal Energy Regulatory Commission FPL Energy New York, LLC, et al.; Electric Rate and Corporate Filings

May 19, 2003.

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

1. FPL Energy New York, LLC, Energy Rockaway Peaking Facilities, LLC

[Docket No. EC03–89–000FPL]

Take notice that on May 13, 2003, pursuant to Section 203 of the Federal Power Act, FPL Energy New York, LLC (FPLE New York) and FPL Energy Rockaway Peaking Facilities, LLC (FPLE Rockaway) (Jointly, the Applicants) filed a joint application for approval of a corporate reorganization. Applicants state that the proposed reorganization will not change the ultimate ownership of the facilities.

The Applicants state that a copy of the application has been served on the New York Public Service Commission, 3

Empire State Plaza, Albany, NY 12223–1350. The Applicants have requested that the filing become effective at the earliest possible date, but no later than June 18, 2003. *Comment Date:* June 3, 2003.

2. TPS GP, Inc., TPS LP, Inc., Panda GS V, LLC, and Panda GS VI, LLC

[Docket No. EC03–90–000]

Take notice that on May 13, 2003, TPS GP, Inc., TPS LP, Inc., Panda GS V, LLC and Panda GS VI, LLC (collectively, Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities for Panda GS V, LLC to divest, and for TPS GP, Inc. to acquire, all of Panda GS V, LLC's interest in TECO-PANDA Generating Company, LP (TPGC) and for Panda GS VI, LLC to divest, and for TPS LP, Inc. to acquire, all of Panda GS VI, LLC's interest in TPGC. Applicants state that TPGC, through its wholly-owned subsidiaries, owns Panda Gila River, L.P., owner and operator of a 2,350 MW natural gas-fired, combined-cycle merchant power plant located in Maricopa County, Arizona; Union Power Partners, L.P., owner and operator of a 2,220 MW natural gas-fired, combined-cycle merchant power plant located in Union County, Arkansas; and Trans-Union Interstate Pipeline, L.P., owner and operator of a 42-mile open access natural gas pipeline extending from Louisiana to Arkansas. *Comment Date:* June 3, 2003.

3. New England Power Pool

[Docket No. ER03–563–005]

Take notice that on May 14, 2003, the New England Power Pool (NEPOOL) Participants Committee submitted a filing with the Federal Energy Regulatory Commission (Commission) that reflects the escrow arrangements entered into between NEPOOL, ISO New England Inc. and each of Devon Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Power LLC (collectively, NRG) to assure that the funds collected from NEPOOL Participants for the maintenance of NRG's generating facilities by ISO New England Inc. as NEPOOL's billing agent on and after April 21, 2003, are used solely for that purpose, in accordance with the Commission's order in Devon Power LLC et. al., 102 FERC ❙ 61,314 (2003).

The Participants Committee states that copies of this filing were sent to the NEPOOL Participants and the New England state governors and regulatory commissions. *Comment Date:* June 4, 2003.

4. Empire District Electric Company

[Docket No. ER03–626–001]

Take notice that on May 14, 2003, the Empire District Electric Company (Empire) submitted a revised version of its Empire Wholesale Electric Service Schedule W–1 (Schedule W–1) in compliance with the Federal Energy Regulatory Commission's April 25, 2003 Order in the proceeding.

Empire states that copies of this filing were served on all customers under Schedule W–1 and on all affected state commissions. *Comment Date:* June 4, 2003

5. Michigan Electric Transmission Company, LLC

[Docket No. ER03–692–001]

Take notice that on May 13, 2003, Michigan Electric Transmission Company, LLC (METC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised version of the Interconnection Facilities Agreement between METC and the City of Hart (Interconnection Agreement and Hart, respectively). METC states that a previous version of this agreement was filed with the Commission on April 1, 2003. METC requests an effective date of March 13, 2003 for the Interconnection Agreement.

METC states that copies of this filing were served on Hart and all parties included on the Commission's official service list established in this proceeding. *Comment Date:* June 3, 2003.

6. American Transmission Company LLC

[Docket No. ER03–847–000]

Take notice that on May 14, 2003, American Transmission Company LLC (ATCLLC) tendered for filing a Distribution-Transmission Interconnection Agreement between ATCLLC and The City of Elkhorn. ATCLLC requests an effective date of April 14, 2003. *Comment Date:* June 4, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R.Salas,

Secretary.

[FR Doc. 03–13079 Filed 5–23–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7503–3]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent order; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed consent order in *American Lung Association* v. *Whitman,* No. 1:03CV00778 (D.D.C. 2003).

This case concerns a challenge, pursuant to section 304 (a) (2) of the Act (42 U.S.C. 6704 (a) (2)), to EPA's failure to perform the mandatory duty of completing reviews of the air quality criteria and national ambient air quality standards (NAAQS) for particulate matter and for ozone, making any appropriate revisions in such criteria and standards, and proposing such new standards or revisions of standards as may be appropriate with the Act's mandate to protect public health and welfare. These duties arise under section 109(d) of the Act (42 U.S.C. 7409(d)).

The proposed consent order is between EPA and the following parties:

American Lung Association, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club. Alabama Environmental Council, Clean Air Council, Michigan Environmental Council, Ohio Environmental Council, and Southern Alliance for Clean Air. The proposed consent order provides that with repect to particulate matter:

- EPA will issue a Criteria Document for particulate matter no later than December 19, 2003;
- EPA will sign for publication a notice of proposed rulemaking concerning its review of the NAAQS for particulate matter no later than March 31, 2005; and
- EPA will sign for publication a notice of final rulemaking concerning its review of the NAAQS for particulate matter no later than December 20, 2005.

The proposed order provides that with respect to ozone:

- EPA will issue a Criteria Document for ozone no later than December 20, 2004;
- EPA will sign for publication a notice of proposed rulemaking concerning its review of the NAAQS for ozone no later than March 31, 2006; and
- EPA will sign for publication a notice of final rulemaking concerning its review of the NAAQS for ozone no later than December 20, 2006.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the consent order are available from Phyllis Cochran, (202) 564–5566. Written comments should be sent to Steven Silverman, Office of General Counsel (2366A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and must be submitted on or before June 26, 2003.

Dated: May 19, 2003.

Lisa K. Friedman,

Associate General Counsel.

[FR Doc. 03–13180 Filed 5–23–03; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7503–5]

Framework for Cumulative Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of a final report.

SUMMARY: The U.S. Environmental Protection Agency's Risk Assessment Forum (RAF) announces the availability of a final report, *Framework for Cumulative Risk Assessment* (EPA/630/P–02/001F, April 2002).

ADDRESSES: The document is available electronically through the Risk Assessment Forum's Web site *(http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=54944).* A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name and mailing address and the title and EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: Michael Callahan, U.S. Environmental Protection Agency Region 6, Mail Code 6RA, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733; telephone: 214–665–2787; facsimile: 214–665–6648; e mail: *callahan.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Several reports, including the National Research Council's (NRC) 1994 report ''Science and Judgment in Risk Assessment,'' have highlighted the importance of understanding the accumulation of risks from multiple environmental stressors. These reports, as well as legislation such as the Food Quality Protection Act of 1996 (FQPA), urged EPA to move beyond single chemical assessments and to focus, in part, on the cumulative effects of chemical exposures occurring simultaneously. In 1999, EPA's Risk Assessment Forum (Forum) began development of EPA-wide cumulative risk assessment guidance. The *Framework for Cumulative Risk Assessment (Framework)* is the result of the efforts of a Forum Technical Panel.

The *Framework* is the first step in a long-term effort to develop Agency-wide cumulative risk assessment guidance. Building on EPA's growing experience with cumulative risk assessment, the *Framework* is intended to foster consistent approaches to cumulative risk assessment in EPA, identify key issues, and define terms used in these assessments. The *Framework* identifies the basic elements of the cumulative risk assessment process and provides a flexible structure for conducting and evaluating cumulative risk assessment, and for addressing scientific issues related to cumulative risk. Although this *Framework* report will serve as a foundation for developing future guidance, it is neither a procedural guide nor a regulatory requirement within EPA, and it is expected to evolve with experience. The *Framework* is not an attempt to lay out protocols to address all the risks or considerations that are needed to adequately inform community decisions. Rather, it is an information document focused on describing various aspects of cumulative risk.

Earlier drafts of the document served as background pieces for peer consultations with State, and Federal, and other peer groups. An external peer review, open to the public, was held in June 2002. Draft documents were revised based on input received during the peer review process, and from public review and comment.

Dated: May 15, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–13179 Filed 5–23–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–53–C (Auction No. 53); DA 03–1544]

Auction of Multichannel Video Distribution and Data Service Licenses (Auction No. 53) Is Postponed

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the postponement of Auction No. 53.

DATES: Auction No. 53 which was scheduled to begin on June 25, 2003 is postponed.

FOR FURTHER INFORMATION CONTACT: Brian Carter of the Auctions and Industry Analysis Division or Jennifer Burton of the Public Safety and Private Wireless Division at (202) 418–0660.

SUPPLEMENTARY INFORMATION: The auction of licenses in the Multichannel Video Distribution and Data Service (''MVDDS'') (Auction No. 53), previously scheduled to begin on June 25, 2003, will be delayed pending

Commission resolution of the Second Further Notice of Proposed Rule Making in ET Docket No. 98–206, RM–9147, and RM–9245 (''FNPRM'') 68 FR 19486 (April 21, 2003). Following release of the Commission's order acting on the FNPRM, the Wireless Telecommunications Bureau will release a public notice announcing key dates for Auction No. 53.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–13070 Filed 5–23–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–1711]

Wireless Telecomunications Bureau Promotes Increased Martime Safety by Expanding Collection of Maritime Mobile Service Information

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Wireless Communications Bureau will collect additional MMSI data recommended by the International Maritime Organization and requested by the GMDSS Task Force. This data collection will be available for U.S Coast Guard use in search and rescue operation and it will enhance maritime safety and improve homeland security. The intended effect of this notice is to expedite search and rescue and avoid large cases of false alerts which are a great burden on the U.S. Coast Guard search and rescue operations.

FOR FURTHER INFORMATION CONTACT: Ghassan Khalek, Public Safety & Private Wireless Division, at 202–418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Public Notice,* DA 03–1711, released on May 15, 2003. The full text of this document is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *http://wireless.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

On December 23, 2002, the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau released a Public Notice inviting parties to file comments regarding a request submitted by the National GMDSS Implementation Task Force (Task Force) that the Commission expand its Maritime Mobile Service Identity (MMSI) database to incorporate additional data fields in accordance with the recommendation in International Maritime Organization (IMO) Assembly Resolution A.887(21). The Task Force suggested that the change be implemented by revising the Commission's application forms to require submission of the expanded data when applying for a station license and when renewing such licenses. All of the comments we received supported the request. We have reviewed the record, and find that the adding the additional data fields is appropriate and will improve search and rescue operations.

In this regard, we conclude that adding the additional data fields is warranted because the efficiency and ease of use of the new GMDSS radio system has resulted in a substantial increase in advertent transmission of false alerts, particularly by vessels using the system voluntarily whose operators are not required to be trained or licensed. The U.S. Coast Guard utilizes the information available from numerous databases, including the Commission's MMSI database, to enhance response to GMDSS distress alerts. The collection of the additional data fields recommended by the IMO will improve the validation process, which will help prevent the unnecessary launching of search and rescue assets.

Specifically, the Commission will collect the recommended data for each vessel (data that the Commission does not currently collect from applicants is indicated with an asterisk):

1. Ship name;
2. Maritime Mobile Service Identity (MMSI);
3. Call sign;
4. *EPIRB Identification Code (if applicable) and its homing frequency;
5. Country;
6. Ship identification number (IMO number or national registration number);
7. Brief ship description;
8. *Name, address, telephone and telefax number of emergency contact person ashore;
9. *Alternative 24-hour emergency telephone number (alternative contact ashore);
10. *Capacity for persons on board (passengers and crew);
11. *Radio installation (Inmarsat-A,B,C,D, VHF DSC, etc.) for ship and survival craft;
12. Identification number for all radio systems available;
13. *Type and number of survival craft; and
14. Date of last modification of database record.

The Wireless Telecommunications Bureau is in the process of enhancing the Universal Licensing System (ULS) to allow the database to collect the additional data. A separate Public Notice will be released when the ULS enhancements are deployed.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety & Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 03–13075 Filed 5–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1138]

Expansion of the Operating Hours for the On–Line Fedwire® Funds Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved the expansion of the operating hours for the on–line Fedwire Funds Service from eighteen hours to twenty–one and one–half hours each business day.[1] The new opening time will be 9 p.m. eastern time for on–line funds transfers with a business date of the following calendar day.[2] The closing time for the service will remain at 6:30 p.m. The Board believes that further expansion of Fedwire operating hours will support the smooth functioning and continued development of the payments system, and improve efficiency and reduce risk in conducting U.S. dollar payments and settlements. Fedwire participants will not be required to change their current hours of participation in the service. The expansion of hours for the on–line Fedwire Funds Service will not affect the operating hours for the origination of off–line funds transfers or telephone advice of credit, and will not affect the

[1] The current Fedwire business day begins at 12:30 am and ends at 6:30 pm. All references to Fedwire apply to the on–line Fedwire Funds Service unless otherwise noted. Fedwire is a registered servicemark of the Federal Reserve Banks.

[2] All references are to eastern time.

operating hours for the Fedwire Securities Service.

DATES: IMPLEMENTATION TIMEFRAME: Second quarter 2004.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director (202/452–2660), James K. Owens, Manager (202/728–5848), or Lorna R. Prosper–Harley, Senior Financial Services Analyst (202/452–2690), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: I. Background. On December 19, 2002, the Board published for comment a proposal to expand the operating hours for the Federal Reserve Banks' on–line Fedwire Funds Service (67 FR 77786). The impetus for the proposal was industry requests to achieve greater overlap of U.S. wholesale payments system operating hours with those of the Asia–Pacific markets, including Australia, Hong Kong, Japan, and New Zealand. The Board has carefully reviewed the proposal and comments received, and has approved the proposal. After implementation of the new hours, the Fedwire operating hours will overlap the operating hours of major Asia–Pacific large–value payments systems by an additional three and one–half hours.[3] The Federal Reserve Banks expect to test with participants beginning in the third quarter of 2003 and will implement these hours in the second quarter of 2004. The exact testing and implementation dates will be announced by the Federal Reserve Banks' Wholesale Product Office at least sixty days in advance and published on the Federal Reserve Financial Services web site at www.frbservices.org.

II. Summary of Comments

The Board requested comment on whether the opening time for Fedwire should be changed from 12:30 a.m. to 9 p.m the previous calendar date or whether another opening time would be preferable. In addition, the Board was interested in commenters' views regarding the business, market, risk management, and operational issues that should be considered in evaluating the advantages and disadvantages of a 9 p.m. to 6:30 p.m. Fedwire business day.[4]

Eighteen comments were received in response to the Board's request. These commenters included four credit unions, four state banks, three national banks, two Federal Reserve Banks, one clearing house, and four trade associations. The majority of commenters generally supported an expansion of the Fedwire operating hours. Only two commenters did not support an expansion of operating hours. One of the two contended that the previous expansion of Fedwire operating hours in 1997, coupled with the availability of Continuous Linked Settlement (CLS) services in 2002, has already significantly lowered settlement risk in foreign exchange markets. Consequently, this commenter believes that a stronger business case for further expansion of Fedwire hours is needed to justify the additional costs depository institutions could incur in adopting an earlier Fedwire opening time. The second commenter did not believe that there was any need to expand the operating hours of Fedwire at this time. After considering these concerns, the Board has concluded that they are outweighed by the expected benefits from the expansion of Fedwire operating hours. This conclusion, in part, is based on the fact that participation during the early hours is voluntary and that a large majority of commenters support the expansion of operating hours.

Two additional commenters supported the Board's proposal, but also noted that the Board's stated goal of assisting institutions operating in multiple time zones would better serve their needs if the Fedwire closing time were expanded to 9 p.m. and the opening time for the next business day remained at 12:30 a.m. The vast majority of commenters, however, supported an earlier Fedwire opening. Thus, the Board concluded that there is significantly greater demand at this time for an earlier opening of Fedwire than for a later close.

Commenters expressed technical concerns with the Board's proposal in three primary areas – end–of–day procedures, extensions, and account balance information.

A. End–of–day Procedures

Two commenters indicated that the period of two and one–half hours between the scheduled close of Fedwire and the proposed open of Fedwire for the next business day might not be sufficient to complete necessary end–of–day processing and procedures. Because participation in the expanded hours is voluntary, the Board believes that depository institutions will be able to adjust their participation in Fedwire to allow sufficient time for their end–of–day activities.

B. Extensions

Five commenters expressed concern that the decreased interim period between the close and open of Fedwire would restrict the Federal Reserve Banks' flexibility in granting extensions to the Fedwire business day. These commenters want the Federal Reserve Banks to retain the flexibility to grant extensions on a case–by–case basis to help mitigate substantial market disruptions, if they occur. Further, these commenters believe that the Federal Reserve Banks should encourage key Fedwire participants to minimize or eliminate the need for extensions of processing deadlines, except in extreme circumstances. The Federal Reserve Banks intend to continue to grant extensions according to published criteria.[5] In general, the Federal Reserve Banks will work to maintain a two–hour interim period between the close and open of Fedwire each business day.[6]

C. Account Balance Information

Three commenters expressed concern that depository institutions' Federal Reserve account balances may not reflect all of the previous day's payment activity at the proposed 9 p.m. open of Fedwire. These commenters note that the use of provisional, rather than final, account balances could adversely affect the risk management practices of those institutions participating in the earlier hours. One commenter suggested further that transactions that cannot be posted by the close of Fedwire should be posted to accounts the following business day. The Federal Reserve Banks are analyzing the sources of late

[3] Under current hours, the Fedwire operating hours overlap the operating hours of major Asia–Pacific large–value payments systems by four to five and one half hours.

[4] The Reserve Bank and Fedwire business days include all days except the following standard holidays that are observed by the Reserve Banks: all Saturdays, all Sundays, New Year's Day (January 1), Martin Luther King's Birthday (third Monday in January), President's Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25). If January 1, July 4, November 11, or December 25 fall on a Sunday, the next following Monday is a standard Reserve Bank holiday.

[5] The criteria for granting extensions can be found in Federal Reserve Operating Circular 6. Operating Circulars are available at www.frbservices.org.

[6] This two–hour period is based upon discussions between the Wholesale Product Office and industry participants regarding participants' current end–of–day processing limitations and is subject to future change. In some cases involving a delayed close of Fedwire, in order to maintain a two–hour interim period, the Wholesale Product Office may need to delay the opening of Fedwire for the next business day. In extreme circumstances, however, the Federal Reserve Banks may need the flexibility to shorten the interim time period. Further, in the long term, the Federal Reserve Banks may have to reevaluate their extension policy to sustain the ability to open Fedwire timely.

postings to Federal Reserve accounts and will take appropriate steps to reduce the number and value of these postings, particularly debits to accounts, where possible.

III. Implementation

A. Fedwire Funds Service Business Day and Operating Hours

As a result of expanded Fedwire hours, the Federal Reserve Banks' funds transfer business day will begin with the opening of Fedwire at 9 p.m. on the previous calendar day. For example, Fedwire will open at 9 p.m. on Sunday night for transactions dated the following Monday. The closing time for the Fedwire will remain at 6:30 p.m. The service will be available for business days Monday through Friday, except for specified holidays observed by the Federal Reserve Banks.

B. Notification of Participation

One Fedwire participant indicated that it would find a listing of depository institutions that plan to participate during the early hours useful. This participant stated that this information would be helpful in assessing whether it would be beneficial to use its intraday liquidity to initiate certain Fedwire funds transfers during the early hours. The Federal Reserve Banks' Wholesale Product Office will consider providing a list of early hour participants on the Federal Reserve Financial Services web site at www.frbservices.org.

C. Fees for Transfers Made During Early Hours

During the new 9 p.m. to 6:30 p.m. business hours, transaction fees for Fedwire funds transfers will be charged at the same level and in the same manner as transfers made during the current 12:30 a.m. to 6:30 p.m. business hours.

D. Intraday Credit

Under expanded hours, Federal Reserve intraday credit will be provided to Fedwire participants in the same manner and on the same terms that such credit is currently provided. While the calculation of the daylight overdraft fee will be adjusted to reflect the expanded Fedwire operating hours, the fee assessed for the use of intraday credit will not change for an overdraft of a given size and duration.[7]

E. Monetary Control and Reserve Management

The Board believes that an expansion of Fedwire operating hours will not affect the current process of reserve management for depository institutions. Because there is a sufficient break in time between Fedwire operating days to allow for measuring reserve holdings, the earlier opening time will not pose monetary measurement and control issues for the Federal Reserve.

IV. Competitive Impact Analysis

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy statement ''The Federal Reserve in the Payments System.''[8] Under this policy, the Board assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services, due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences.

The Board has concluded that the expansion of Fedwire operating hours would not have a direct and material adverse effect on the ability of competitors to compete effectively with the Reserve Banks. The Reserve Banks are the only providers of real–time gross settlement of funds transfers in central bank money in the United States. The main alternative provider of large–value funds transfer services, and a number of depository institutions, have provided comments noting the advantages to them of expanding Fedwire operating hours. In particular, these organizations believe that the expansion of the Fedwire operating hours will allow them to enhance the finality of the U.S. dollar payment and settlement services they are able to provide internationally.

By order of the Board of Governors of the Federal Reserve System, May 21, 2003.

Jennifer J. Johnson,

Secretary of the Board

[FR Doc. 03–13148 Filed 5–23–03; 8:45 am]

BILLING CODE 6210–01–S

[7]; While the effective annual rate charged on daylight overdrafts would change from 27 basis points under an 18–hour Fedwire operating day to 32.25 basis points under a 21.5–hour Fedwire operating day, the annual rate charged on daylight overdrafts would remain at 36 basis points. This increase in the effective annual rate will not lead to an increase in fees for daylight overdrafts of a given size and duration because there will be an offsetting increase in the number of minutes used to calculate average daylight overdrafts. An example of the daylight overdraft fee calculation is available at *http://www.federalreserve.gov/paymentsystems/psr/overview.pdf*.

[8] Federal Reserve Regulatory Service 7-145.2.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee.

General Function of the Subcommittee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 11, 2003, from 8:30 a.m. to 5 p.m. and on June 12, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: *perezt@cder.fda.gov*, or FDA Advisory Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 11, 2003, the subcommittee will discuss the current epidemiology and therapeutic interventions relevant to hyperbilirubinemia in the term and near-term newborn. On June 12, 2003, the subcommittee will begin with a closed session between 8 a.m. and 3 p.m. Following the closed session, there will be an open subcommittee meeting from approximately 3:15 p.m. to 5 p.m., where the agency will report to the subcommittee on adverse event reporting as mandated in section 17 of the Best Pharmaceuticals for Children Act. The products to be discussed during this portion of the meeting include ZOLOFT (sertraline) Pfizer Inc., and DITROPAN (oxybutynin) Alza Corp., with an interim update to be provided on LIPITOR (atorvastatin) Pfizer Inc., and ZOCOR (simvastatin) Merck & Co. Inc. The background material for this meeting will be posted on the Internet when available or 1-

working day before the meeting at *www.fda.gov/ohrms/dockets/ac/menu.htm*.

Procedure: On June 11, 2003, from 8 a.m. to 5 p.m., the meeting is open to the public. On June 12, 2003, from 3:15 p.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by June 4, 2003. On June 11, 2003, oral presentations from the public will be scheduled between approximately 3 p.m. and 4 p.m. On June 12, 2003, oral presentations from the public will be scheduled between approximately 4:15 p.m. and 4:45 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by June 4, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Subcommittee Deliberations: On June 12, 2003, from 8 a.m. to 3 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Thomas Perez at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 19, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–13054 Filed 5–23–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pharmacology and Toxicology Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pharmacology and Toxicology Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 10, 2003, from 8:30 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room (rm. 1066), 5630 Fishers Lane, Rockville, MD.

Contact Person: Kimberly Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail: *TOPPERK@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review and discuss issues relating to the format and content of genome scale gene expression data generated during nonclinical pharmacology and toxicology investigations and the submission of this data to the agency.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by June 2, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 2, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly Topper at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 15, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–13055 Filed 5–23–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Research Career Development Awards.

Date: June 16–17, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Robert B. Moore, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7178, MSC 7924, Bethesda, MD 20892, 301/435–0725.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13091 Filed 5–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Tuberculosis Curriculum Coordinating Center.

Date: June 19, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Zoe E Huang, MD, Scientific Review Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, 301–435–0314.

(Catalogue of Federal Domestic Assistance Program Nos. 93.244, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 16, 2003.

LaVerne y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13092 Filed 5–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Dieases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee. Allergy, Immunology, and Transplantation Research Committee.

Date: June 9–10, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Division of Extramural Activities, NIAID, NIH, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *ns120v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13083 Filed 5–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Novel Diagnostics and Therapeutics for Caliciviruses.

Date: June 19, 2003.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Eugene R. Baizman, PhD, Scientific Review Administrator, NIH/NIAID/DEA, Scientific Review Program, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *eb237e@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13084 Filed 5–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special

Emphasis Panel Review of Exploratory/Development Research Applications (R21s).

Date: July 15–17, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Radisson Governor's Inn, I–40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709.

Contact Person: Sally Eckert-Tilotta, PhD, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1446, *eckertt1@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of Conference Applications (R13s).

Date: August 20, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of Conference Applications (R13s).

Date: August 21, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13085 Filed 5–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Gene Silencing SEP.

Date: May 19, 2003.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Spotrias Grant Applications S.E.P.

Date: June 9–10, 2003.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Muscular Dystrophy Centers RFA.

Date: June 24–25, 2003.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Willard Inter-Continental Washington Hotel, 1401 Pennsylvania Avenue, NW., Washington, DC 2004.

Contact Person: Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnellj@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13088 Filed 5–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Training Grant and Career Development Review Committee.

Date: June 19–20, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street, NW., Washington, DC 20037.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

Date: June 19–20, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Willard Inter-Continental Washington Hotel, 1401 Pennsylvania Avenue, NW., Washington, DC 20004–101.

Contact Person: W. Ernest Lyons, PhD., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Katherine M. Woodbury, PhD., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Willard Inter-Continental Washington Hotel, 1401 Pennsylvania Avenue, NW., Washington, DC 20004–101.

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301 496–0660, *sawczuka@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13089 Filed 5–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Perinatal Nutrition.

Date: June 17–18, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705.

Name of Committee: National Institute on Aging Special Emphasis Panel, Comparative Biology of Aging.

Date: June 18–19, 2003.

Time: 6:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Alessandra M. Bini, PhD, Health Scientist Administrator, Scientific Review Office, National institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7708, *binia@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: June 19–20, 2003.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building Suite 2C212, 7201 Wisconsin avenue, Bethesda, MD 20814, 301–402–7703, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Collaborative Ad.

Date: June 27, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William Cruce, PhD, Scientific Review Administrator, National Institute on Aging, National Institutes of Health, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7704, *crucew@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13090 Filed 5–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Integrative, Functional and Cognitive Neuroscience 3, June 9, 2003, 9 a.m. to June 9, 2003, 5 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on May 7, 2003, 68 FR 24493–24495.

The meeting has been changed to June 13, 2003. The location and time remains the same. The meeting is closed to the public.

Dated: May 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13086 Filed 5–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Reviews in Developmental Neurotoxicity.
Date: May 29, 2003.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *roberlu@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 4.
Date: June 3–4, 2003.
Time: 8 a.m to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham City Center, 1143 New Hampshire Avenue, Washington, DC 20037.
Contact Person: Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov*.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Lung Biology and Pathology Study Section.
Date: June 10–11, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham City Center, 1143 New Hampshire Avenue, Washington, DC 20037.
Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *george_barnas@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG 1 SSS W 50R:PA02–125: Bioengineering Nanotechnology Initiative.
Date: June 10, 2003.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Aging, Modeling, and Cognition.
Date: June 10, 2003.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Dana Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1856, *pluded@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Nursing Research: Child & Family.
Date: June 11, 2003.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.
Contact Person: Gertrude K. McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflicts for NURS.
Date: June 11, 2003.
Time 3:30 p.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott—Tysons Corner, 1960–A Chain Bridge Road, McLean, VA 22102.
Contact Person: Karin F. Helmers, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017.

Name of Committee: Pathophysiological Sciences Integrated Review Group Alcohol and toxicology Subcommittee 1.
Date: June 11–12, 2003.
Time 8 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Patricia Greenwel, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175 MSC 7818, Bethesda, MD 20892, (301) 435–1169, *greenwelp@csr.nih.gov.*

Name of Committee: Hematology Integrated Review Group, Erythrocyte and Leukocyte Biology Study Section.
Date: June 12, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814
Contact Person: Jerrold Fried, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, (301) 435–1777, *friedj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Adult Psychopathology and Disorders of Aging.
Date: June 12–13, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Jeffrey W. Elias, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *eliasj@csr.nih.gov.*

Name of Committee: Genetic Sciences Integrated Review Group, Genetics Study Section.
Date: June 12–14, 2003.
Time: 9 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.
Contact Person: David J. Remondini, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, *remondid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hemostasis and Platelet Biology.
Date: June 13, 2003.
Time: 11 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Robert T. Su, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: May 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–13087 Filed 5–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1466–DR]

Alabama; Amendment No. 3 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama, (FEMA–1466–DR), dated May 12, 2003, and related determinations.

EFFECTIVE DATES: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 12, 2003:

Walker County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–13130 Filed 5–23–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1469–DR]

Illinois; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1469–DR), dated May 15, 2003, and related determinations.

EFFECTIVE DATES: May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 15, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms, tornadoes, and flooding on May 6–11, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Ron Sherman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Adams, Alexander, Brown, Fulton, Hancock, Mason, Massac, Pope, Pulaski, Schuyler, Tazewell, and Woodford Counties for Individual Assistance.

All counties within the State of Illinois are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–13131 Filed 5–23–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1462–DR]

Kansas; Amendment No. 3 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas, (FEMA–1462–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Anderson and Woodson Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–13127 Filed 5–23–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1459–DR]

Mississippi; Amendment No. 2 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi, (FEMA–1459–DR), dated April 24, 2003, and related determinations.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 24, 2003:

Pearl River and Marion Counties for Individual Assistance.

Kemper, Neshoba and Rankin Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–13126 Filed 5–23–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1463–DR]

Missouri; Amendment No. 3 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri, (FEMA–1463–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATES: May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Audrain, Boone, Callaway, Chariton, Clark, Cole, Howard, Knox, Lewis, Lincoln, Marion, Moniteau, Montgomery, Osage, Pike, Ralls, Randolph, and Shelby Counties for Individual Assistance.

Howard and Lewis Counties for Public Assistance.

Clay County for Categories C through G under the Public Assistance Program (already designated for Individual Assistance and debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–13128 Filed 5–23–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1464–DR]

Tennessee; Amendment No. 2 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee, (FEMA–1464–DR), dated May 8, 2003, and related determinations.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 8, 2003:

Cumberland, Giles, Humphreys, Jackson, Roane, Smith, Tipton and Trousdale Counties for Public Assistance.

Bradley, Gibson, Hamilton, Houston, Lake, Maury, Obion, Rhea, Rutherford and Wayne Counties for Public Assistance (already designated for Individual Assistance).

Hardin, Morgan and Sumner Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–13129 Filed 5–23–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Request for Comments on Grazing Regulations Information Collection Renewal

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed collection.

SUMMARY: As required by the Paperwork Reduction Act of 1995, we are renewing the information collection found in the general grazing regulations. The purpose of this data collection is to ensure that grazing regulations are administered for the benefit of Indian tribes and individual Indians. We invite your comments on this renewal.

DATES: Comments on this proposed information collection must be received by July 28, 2003.

ADDRESSES: Send comments to Bureau of Indian Affairs, Office of Trust Responsibilities, Division of Natural Resources, Mail Stop-3061, 1849 C Street, NW., Washington, DC 20240. Comments may also be telefaxed to (202) 219–0006. We cannot accept e-mail comments at this time.

FOR FURTHER INFORMATION CONTACT: James R. Orwin, (202) 208–6464.

SUPPLEMENTARY INFORMATION: The collection of information is authorized under Public Law 103–177, the ''American Indian Agricultural Resource Management Act,'' as amended. Tribes, tribal organizations, individual Indians, and those entering into permits with tribes or individual Indians submit information required by the regulation. The information is used by the Bureau of Indian Affairs to determine:

(a) Whether or not a permit for grazing may be approved or granted;

(b) The value of each permit;

(c) The appropriate compensation to landowners; and

(d) Provisions for violations of permit and trespass.

Request for Comments

The Bureau of Indian Affairs requests your comments on this collection concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 3061, during the hours of 8 a.m. to 4 p.m. EST, Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB Control Number: 1076–0157.

Type of review: Renewal.

Title: Grazing Permits, 25 CFR part 166.

Brief description of collection: Information is collected through a grazing permit application. Respondent supplies all information needed to prepare a grazing permit, including: Name, address, range unit requested, number of livestock, season of use, livestock owner's brand, kind of livestock, mortgage holder information, ownership of livestock, and requested term of permit.

Respondents: Possible respondents include: Individual tribal members, individual non-Indians, individual tribal member-owned businesses, non-Indian owned businesses, tribal governments, and land owners who are seeking a benefit; namely, grazing privileges.

Number of Respondents: 1,000 annually.

Estimated Time Per Response: 30 minutes.

Frequency of Response: Annually.

Total Annual Burden to Respondents: 500 hours.

Total Annual Salary Cost to Respondents: $5.00 × 500 hours = $2500.

Dated: May 18, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–13146 Filed 5–23–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–03–1010–BN–241A]

Notice of Public Meeting, Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Northwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

The Northwest Colorado RAC meeting will be held July 2, 2003 at the Bureau of Land Management Office, located at 73544 Highway 64 in Meeker, Colorado.

The Northwest Colorado RAC meeting will begin at 9 a.m. and adjourn at approximately 4 p.m. Public comment periods at the meeting will be in the morning at 9:30 a.m. and in the afternoon, to start no later than 3 p.m.

DATES: The Northwest Colorado RAC meeting is July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Larry J. Porter, RAC Coordinator, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3012.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Colorado.

Purpose of the Northwest Colorado RAC July 2, 2003 meeting is to consider

resource management related topics including; possible revision recommendations to the Northwest Colorado RAC Charter; and the Sustained Working Landscapes Policy initiative.

The RAC meeting is open to the public. The public may present written comments to the RAC. The RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals planning to attend the meeting who need special assistance should contact the RAC Coordinator listed above.

Dated: May 20, 2003.

Larry Porter,

Acting Western Slope Center Manager.

[FR Doc. 03–13112 Filed 5–23–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CO–922–1310–FI]

Notice of Proposed Reinstatements of Terminated Oil and Gas Leases

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas leases, COC 57683,COC57685,COC57975, COC57976 for lands in Garfield county; and COC57969, COC57970, COC57972, COC57973, COC57967, COC57965, COC59138 in Colorado, were timely filed and were accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the leases as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate leases COC 57683 and COC57685,effective March 1, 2002, and leases COC57975, COC57976, COC57969, COC57970, COC57972, COC57973, COC57967, COC57965, COC59138, effective June 1, 2002, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

Beverly A. Derringer,

Chief, Fluid Minerals Adjudication.

[FR Doc. 03–13140 Filed 5–23–03; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. AA–1921–143 and 731–TA–343 (Review) (Remand)]

Tapered Roller Bearings From Japan; Notice and Scheduling of Remand Proceedings

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its five-year review in Investigation Nos. AA–1921–143 (Review) and 731–TA–343 (Review).

EFFECTIVE DATE: May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Heidi Colby-Oizumi (Office 501–H) (205–3391) (*hcolby@usitc.gov*) or Jim McClure (Office 615–O) (205–3191) (*jmcclure@usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record in this five-year review for the limited purpose of sending questions to Japanese foreign producers and their representatives to gather evidence relevant to the subject of Japanese producers' reported production and production capacity information for tapered roller bearings for their Japanese facilities. The Commission will provide interested parties with an opportunity to file comments on any new information received pertaining to that subject.

Participation in the Proceedings

Only those persons who were interested parties to the five-year review (*i.e.*, persons listed on the Commission Secretary's service list) may participate in these remand proceedings.

Written Submissions

Each party who is an interested party in this remand proceeding may submit one set of written comments to the Commission. These comments must be concise and must be limited specifically to commenting on the issue of Japanese producers' reported production and production capacity information for tapered roller bearings for their Japanese facilities, and to any related new information obtained by the Commission during the remand proceedings. Any material in the interested parties' comments that does not address these limited issues will be stricken from the record. No new factual information may be included in such comments. Comments shall be submitted in a font of no smaller than 11-point (Times new roman) and shall be limited to no more than 5 double-spaced pages (inclusive of footnotes, tables, graphs, exhibits, appendices, etc.). These comments must be filed no later than the close of business on June 10, 2003.

All comments must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the five-year review must be served on all other parties to the five-year review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of BPI Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand proceedings will be released to parties under the APO in effect in the five-year review. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the five-year review and in these remand proceedings available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of this notice in the **Federal Register**. Applications must be filed for persons on the Judicial Protective Order in the related CIT case, but not covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in these remand proceedings.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: May 21, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–13227 Filed 5–22–03; 11:24 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Extension of a currently approved collection Making Officer Redeployment Effective (MORE) Grant Progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 63, page 16087 on April 2, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 26, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Making Officer Redeployment Effective (MORE) Grant Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* COPS. Form number: Not applicable.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: MORE 2001 award recipients. Other: None. The currently approved collection instrument targeted MORE aware recipients to gather data on equipment purchased and/or civilians hired under the MORE '98 program. The questions used to gather data on the equipment purchases will be used by the COPS Office to track summary data on the equipment purchased with COPS funding and to monitor the progress of the MORE '01 award recipients in implementing their grant. The questions used to gather data on civilians will be deleted.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* This collection will be sent to 541 respondents. The estimated amount of time required for the average respondent to respond is 1.5 hours.

(6) *An estimate of the additional public burden (in hours) associated with the collection:* The total estimated burden on the public is 1,082 hours annually.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 21, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–13139 Filed 5–23–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Extension of a currently approved collection; requisition for forms of publication and requisition for firearms/explosives forms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 26, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Dirck Harris, Document Services Branch, Room 3110, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, and other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Requisition For Forms or Publications and Requisition For Firearms/ Explosives Forms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 1370.3 and ATF F 1370.2. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individual or households. The forms are used by the general public to request or order forms or publications from the ATF Distribution Center. The forms also notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms and publications by the general public.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 30,000 respondents will complete each 3 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,725 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 20, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–13138 Filed 5–23–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 15, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment Standards Administration (ESA).

Type of Review: Extension of a currently approved collection.

Title: Employment Under Special Certificate of Apprentices, Messengers, and Learners (including Student Learners).

OMB Number: 1215–0192.

Frequency: On occasion and Annually.

Type of Response: Recordkeeping and Reporting.

Affected Public: Business or other for-profit; Individuals or households; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 400.

Annual Responses: 400.

Average Response Time: 30 minutes.

Total Burden Hours: 200.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/ maintaining systems or purchasing services): $160.

Description: Employers are required by the Department of Labor to submit an application for authorization to employ apprentices, messengers, and learners at subminimum wages under the provisions of section 14(a) of the Fair Labor Standards Act. Required applications and records are reviewed by the Department of Labor to determine whether statutory and regulatory requirements for the employment of apprentices, messengers, and learners have been met.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–13123 Filed 5–23–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

May 20, 2003.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by June 20, 2003. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Room 10235, Washington, DC 20503. The Office of Management and Budget is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility, and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Agency: Employment and Training Administration (ETA).

Title: Reporting for Temporary Extended Unemployment Compensation Program for Displaced Airline Workers.

OMB Number: 1205–NEW.

Affected Public: Business or other for-profit and State, Local, or Tribal government.

Number of Respondents: 40,000.

Annualized Reporting Burden (time measured in hours):

Annual responses	Estimated time per response	Total burden
Employer 40,000	.25	10,000
State 40,000	.50	20,000
Total:		30,000

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: On April 16, 2003, President Bush signed into law an enhancement to the Temporary Extended Unemployment Compensation (TEUC) program. This enhancement created special rules for determining TEUC eligibility for certain displaced airline related workers. Such workers may qualify for an additional 26 weeks of basic TEUC benefits if the worker became unemployed as a result of terrorist actions of September 11, 2001 as a result of security responses to these attacks or the closing of an airport, or as a result of the military conflict in Iraq. To determine TEUC eligibility for these displaced airline and related workers specific information from employers will need to be collected. Approval is being sought for this collection of information.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–13124 Filed 5–23–03; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board; Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service. The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES performance awards ranks and bonuses. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the **Federal Register**.

The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission from May 21, 2003 to May 21, 2005: Susan J. Binder, Patricia Cornwell-Johnson, Patricia E. Gallagher, Kenneth S. Pond, and Martha A. Rubenstein.

DATES: May 20, 2003.

FOR FURTHER INFORMATION CONTACT: Connie M. Harshaw, Chief Operating Officer, National Capital Planning Commission, 401 Ninth Street, NW., Suite 500, Washington, DC 20576, (202) 482–7220

Dated: May 20, 2003.

Ash J. Jain,

Certifying Officer.

[FR Doc. 03–13094 Filed 5–23–03; 8:45 am]

BILLING CODE 7520–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by June 26, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs; National Science Foundation, 4201 Wilson boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant*—Permit Application No. 2004–002, Lawrence J. Conrad, 845 17th Street, Washougal, WA 98671.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The applicant proposes to take photographs of named geographic features throughout the McMurdo Sound region. The photographs will illustrate a geographically arranged gazetteer or ''field guide'' to the features. The applicant proposes to enter the Barwick Valley, Victoria Land (ASPA #123) to fully document the Barwick Valley features which will benefit the scientific community in current and future work. Delineating data accompanying each photograph will include latitude, longitude, altitude, date, time, elevation, look direction, focal length and associated camera settings. The photographs and accompanying data will provide the potential for contemporary and future comparative studies of landscape change, thereby reducing need for access to the ASPA. The applicant proposes a single two day journey into the Barwick Valley and will fully comply with the designated management plan for the site.

In addition, the applicant proposes to enter Discovery Hut (ASPA #157), Cape Evans Historic Site (ASPA #154), and Hut and Associated Artifacts, Backdoor Bay, Cape Royds (ASPA #156) for the purpose of reproducing historic photos of the area for use in the described gazetteer.

Location

ASPA #123—Barwick Valley, Victoria Land
ASPA #154—Cape Evans Historic Site
ASPA #156—Hut and associated artifacts, Backdoor Bay, Cape Royds, Ross Island
ASPA #157—Discovery Hut, Hut Point, Ross Island

Dates

August 22, 2003 to February 15, 2004.

2. *Applicant*—Permit Application No. 2004–003, Mark Buckley, Multimedia Manager, Raytheon Polar Services Company, 7400 S. Tucson Way, Centennial, CO 80112.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The applicant is a member of Raytheon Polar Services Company, which is the prime civilian contractor to the U.S. Antarctic Program (USAP), and is tasked by the National Science Foundation (NSF) with video production in Antarctica. During the past several years, unprecedented ice conditions had adverse impact on penguin colonies in the McMurdo Sound and Ross Sea region. With the recent calving of C–19 and the influence of B–15, it is expected that scientific interest and activities, as well as public interests will continue. Therefore the applicant proposes his staff of videographers be permitted to enter the Antarctic Specially Protected Areas of Beaufort Island (ASPA 105), New College Valley, Cape Bird (ASPA 116), Cape Royds, Ross Island (ASPA 121), and Cape Crozier, Ross Island (ASPA 124) for the purpose of taking ''low impact'' documentary film footage. The video team will accompany a similarly permitted researcher into the sites to film scientific research. Access to the sites will be dependant upon operational, scientific conditions, and availability of transportation.

Location

Beaufort Island (ASPA 105), New College Valley, Cape Bird (ASPA 116), Cape Royds, Ross Island (ASPA 121), and, Cape Crozier, Ross Island (ASPA 124).

Dates: October 1, 2003 to February 14, 2006.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–13173 Filed 5–23–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456, STN 50–457]

Exelon Generation Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Exelon Generation Company, LLC (the licensee) to withdraw its March 19, 2002, application as supplemented by their letters dated November 26, 2002, and March 13, 2003, for proposed amendment to Facility Operating License Nos. NPF–37 and NPF–66 for the Byron Station, Units 1 and 2, located in Ogle County, Illinois, and Facility Operating License Nos. NPF–72 and NPF–77 for the Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendment would have revised the method of controlling the fuel cycle unfavorable exposure time (UET) related to an anticipated transient without scram (ATWS) event. Specifically, the proposed change would have deleted TS 5.6.5.b.5 and appropriately would have revised the discussion of an ATWS event in the Updated Final Safety Analysis Report, Section 15.8, ''Anticipated Transient Without Scram.''

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 25, 2002, (67 FR 42825). However, by letter dated March 13, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 19, 2002, as supplemented by their letter November 26, 2002, and the licensee's letter dated March 13, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. 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/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of May 2003.

For the Nuclear Regulatory Commission.

Mahesh Chawla,

Project Manager, Section 2, Project Directorate 3, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–13145 Filed 5–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–18286]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for a License Amendment for Covance Laboratories, Madison, WI

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to Covance Laboratories, Inc.'s (Covance) Byproduct Material License No. 48–11805–02, authorizing Covance to release its Deming Way facility located in Madison, Wisconsin, for unrestricted use. In December 1989, the NRC granted

Covance a license for the Deming Way facility for in-vitro research and development utilizing tracer quantities of H–3 and C–14, and chemical analyses utilizing Ni-63 as a foil or plated source for gas chromatography. On November 22, 2002, Covance notified the NRC that it was ceasing operations at the Deming Way facility and requested release of this facility for unrestricted use. The NRC staff has prepared an Environmental Assessment (EA) in support of this licensing action in accordance with the requirements of 10 CFR part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

II. EA Summary

The proposed amendment would allow Covance to remove the Deming Way facility from its license and release the facility for unrestricted use. Covance provided survey results which demonstrate that the Deming Way facility is in compliance with 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use.''

The staff has examined Covance's request and the information that the licensee has provided in support of its request, to ensure that the NRC's decision is protective of the public health and safety and the environment.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of Covance's proposed license amendment to release the Deming Way facility for unrestricted use. On the basis of the EA, the staff has concluded that the environmental impacts from the proposed action would not be significant. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an environmental impact statement is not warranted.

IV. Further Information

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' Covance's request, the EA summarized above, and the documents related to this proposed action are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html.* These documents include Covance's letter to NRC dated November 22, 2002, with enclosures (Accession No. ML030640568); Covance's letter to NRC dated January 31, 2003, with enclosures (Accession No. ML030790430); Covance's letter to NRC dated March 13, 2003 (Accession No. ML030790430); and the EA summarized above (Accession No. ML031330660). Any questions with respect to this action should be directed to Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351; telephone (630) 829–9870 or by email at *pjl2@nrc.gov.*

Dated at Lisle, Illinois, this 12th day of May, 2003.

For the Nuclear Regulatory Commission.

Christopher G. Miller,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 03–13144 Filed 5–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on June 12–13, 2003, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 20, 2002 (67 FR 70094).

Thursday, June 12, 2003

8:30 a.m.—8:35 a.m.: Opening Statement by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.—12:45 p.m.: Workshop on Safety Culture: Panel A—Collective Understanding of Safety Culture (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, nuclear industry, private consultants, and public regarding collective understanding of safety culture.

1:45 p.m.—5 p.m.: Workshop on Safety Culture (continued): Panel B—Attributes of Safety Culture (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, nuclear industry, private consultants, and public regarding attributes of safety culture.

5 p.m.—6 p.m.: Conclusions and Outcome of the Workshop (Open)—The Committee will discuss the conclusions resulting from the Workshop.

Friday, June 13, 2003

8:30 a.m.—8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.—10 a.m.: Update to Generic License Renewal Guidance Documents (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding potential improvements to license renewal guidance documents (Generic Aging Lessons Learned Report; Regulatory Guide 1.188, Standard Format and Content for Applications to Renew Nuclear Power Plant Operating Licenses; Standard Review Plan for Review of License Renewal Applications; and NEI 95–10, Industry Guideline for Implementing the Requirements of 10 CFR part 54).

10 a.m.—10:30 a.m.: Subcommittee Report on the Fort Calhoun License Renewal Application (Open)—Report by the Chairman of the ACRS Subcommittee on License Renewal regarding the Subcommittee's review of the license renewal application for the Fort Calhoun Station Unit 1 and the associated NRC staff's Safety Evaluation Report.

10:45 a.m.—11:45 a.m.: Proposed Strategy for Preparing the 2004 ACRS Report on the NRC Safety Research Program (Open)—Report by the Chairman of the ACRS Subcommittee on Safety Research Program regarding a proposed strategy for preparing the 2004 ACRS report on the NRC Safety Research Program.

12:45 p.m.—1:45 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

1:45 a.m.—2 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

2:15 p.m.—6:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will consider a proposed ACRS report on Safeguards and Security (Closed). *The discussion of the Safeguards and Security report will be held in Room T–8E8.*

6:30 p.m.—7 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63460). In accordance with

those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director if such rescheduling would result in major inconvenience.

In accordance with subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close a portion of this meeting noted above to discuss and protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support (301) 415–0138), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301) 415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: May 20, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–13142 Filed 5–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on June 11, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, June 11, 2003—8:30 a.m. until the conclusion of business.*

The purpose of this meeting is to review the license renewal application for the Fort Calhoun Station Unit 1 and the NRC staff's initial Safety Evaluation Report. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the Omaha Public Power District, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (telephone 301/415–8065), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: May 19, 2003.

Sher Bahadur,

Associate Director, for Technical Support, ACRS/ACNW.

[FR Doc. 03–13143 Filed 5–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, May 2, 2003, through May 15, 2003. The last biweekly notice was published on May 13, 2003 (68 FR 25648).

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 Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 26, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* 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 Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent 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 PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: April 21, 2003.

Description of amendment request: The licensee proposed to revise Sections 3.7 and 4.7, ''Auxiliary Electrical Power,'' of the Technical Specifications (TSs) to make them generally consistent with Nuclear Regulatory Commission (NRC) guidance set forth in NUREG–1433, ''Standard Technical Specifications, General Electric Plants, BWR [Boiling Water Reactor]/4,'' Revision 2, and with the NRC-approved industry guidance identified as Technical Specification Task Force (TSTF) traveler TSTF–360, Revision 1. The amendment would also add a new Section 6.8.5, ''Station Battery Monitoring and Maintenance Program.'' The resulting Sections 3.7, 4.7, and 6.8.5 will be explicitly applicable to station batteries B and C, both safety-related subsystems, and their associated battery chargers. The proposed amendment would revise requirements concerning surveillance, monitoring, and maintenance of the subject batteries and chargers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three standards of 10 CFR 50.92(c) and performed its own. The NRC staff's analysis is presented below:

The first standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes, if approved by the NRC, will be made in a manner such that conservatism is maintained through compliance with applicable NRC regulations and guidance. No hardware design change is involved with the proposed amendment, thus there will be no adverse effect on the functional performance of any plant structure, system, or component (SSC). Consequently, all SSCs will continue to perform their design functions with no decrease in their capabilities to mitigate the consequences of postulated accidents. Station battery surveillance, monitoring, and maintenance were not previously factored into the probability of accidents, nor were they factored into scenarios of previously analyzed accidents. Consequently, the proposed revision to Sections 3.7, 4.7, and 6.8.5 of the TSs will lead to no increase in the consequences of an accident previously evaluated, and no increase of the probability of an accident previously evaluated.

The second standard requires that operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment is not the result of a hardware design change, nor does it lead to the need for a hardware design change. There is no change in the methods the unit is operated. As a result, all SSCs will continue to perform as previously analyzed by the licensee, and previously evaluated and accepted by the NRC staff. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The third standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. Since the licensee did not propose to exceed or alter a design basis or safety limit, the proposed amendment will not affect in any way the performance characteristics and intended functions of any SSC. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Richard J. Laufer.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: April 15, 2003.

Description of amendments request: The amendments would revise Sections 2.2, ''SL [Safety Limits] Violations,'' for reporting such violations to positions in the plant organization; 5.2.1, ''Onsite and Offsite Organization,'' for the position responsible for overall safe plant operation; and 5.5.1, ''Offsite Dose Calculation Manual (ODCM),'' for the position that approves changes to the ODCM, of the Technical Specifications (TSs). The revisions would account for the elimination of the positions of Vice President, Nuclear Production, and Director, Site Chemistry, and the assignment of the responsibilities of these positions in the above TS sections to other positions in the plant organization. Also, there would be the format change of adding the title of Section 2.2 near the top of TS page 2.0–2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes involve minor changes in the organization of PVNGS. It is expected that the organizational changes will have a positive effect on the conduct of plant operations and safety-related work. Functions which are necessary to operate the facility safely and in accordance with the operating licenses, remain in the re-aligned organization and will not affect the safe operation of the plant and continue to ensure proper control of administrative activities. The Quality Assurance (QA) organization reporting structure has not been affected by these changes allowing the QA organization to maintain the required authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions. The proposed changes will not affect the operation of structures, systems, [or] components, and will not reduce programmatic controls such that plant safety would be affected. (The changes in the plant organization are also not initiators of an accident.) Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not affect the operation of structures, systems, [or] components, and will not reduce programmatic controls such that plant safety would be affected. The changes in the organization will continue to provide necessary oversight and control of administrative processes. [The changes in the plant organization are also not initiators of an accident.] 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.

These changes are administrative and will not diminish any organizational or administrative controls currently in place. The proposed changes will not affect the operation of structures, systems, [or] components, and will not reduce programmatic controls such that plant safety would be affected. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above, APS concludes that the activities associated with the proposed amendment(s) present no significant hazards consideration under the standards set forth in 10 CFR 50.92 ''Issuance of Amendment,'' (c) and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, PO Box 52034, Mail Station 7636, Phoenix, Arizona 85072–2024.

NRC Section Chief: Stephen Dembek.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: May 1, 2003.

Description of amendment request: The proposed amendment would increase the maximum enrichment limit of the fuel assemblies that can be stored in the Unit 1 spent fuel pool by taking credit for soluble boron in maintaining acceptable margins of subcriticality.

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. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will increase the maximum enrichment limit of the fuel assemblies that can be stored in the Unit 1 spent fuel pool (SFP) by taking credit for soluble boron in maintaining acceptable margins of subcriticality. The proposed change will modify Technical Specification 4.3.1 ''Criticality'' and add Technical Specification 3.7.16 ''Spent Fuel Pool Boron Concentration.'' The postulated accidents for the SFP are basically four types: (1) dropped fuel assembly on top of the storage rack, (2) a misloading accident, (3) an abnormal location of a fuel assembly, and (4) loss-of-normal cooling to the SFP.

There is no increase in the probability of a fuel assembly drop accident in the SFP when considering the higher enriched fuel or the presence of soluble boron in the SFP water. Dropping a fuel assembly on top of the SFP storage racks is not credible at Calvert Cliffs due to the design of the spent fuel handling machine and due to the height of the SFP storage racks. The handling of the fuel assemblies has always been performed in borated water and will not change as a result of crediting soluble boron in the SFP criticality analysis. The proposed change does not change the general design and characteristics of the fuel assemblies. Therefore, the proposed change does not increase the probability of a fuel assembly drop accident.

There is no increase in the probability of the accidental misloading of irradiated fuel assemblies into the SFP storage racks when considering the higher enriched fuel or the presence of soluble boron in the SFP water for criticality control. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures.

Due to the design of the SFP storage racks, an abnormal placement of a fuel assembly into the SFP storage racks is not possible. Also, the design of the SFP prevents an inadvertent placement of a fuel assembly between the outer most storage cell and the pool wall. The proposed change does not make any change to the design of SFP. Therefore, there is no increase in the probability of abnormal placement of a fuel assembly into the SFP storage racks.

The proposed change will not result in any changes to the SFP cooling system, and the fuel assembly design and characteristics are not changed by an increase in fuel enrichment. Therefore, there is no increase in the probability of a loss of SFP cooling. Also, since a high concentration of soluble boron has always been maintained in the SFP water, there is no increase in the probability of the loss of normal cooling to the SFP water considering the presence of soluble boron in the pool water for criticality control.

There is no increase in the consequences of an accidental drop or accidental misloading of a maximum enriched fuel assembly into the SFP storage racks, because the criticality analysis demonstrates that the pool will remain subcritical following either event, even if the pool contains a boron concentration less than the proposed Technical Specification limit. The proposed Technical Specification limit will ensure that an adequate SFP boron concentration will be maintained.

There is no increase in the consequences of a loss-of-normal SFP cooling because the Technical Specification boron concentration provides significant negative reactivity. Loss of the SFP water via boiling will not result in a loss of soluble boron, since the soluble boron is not volatile. Therefore, loss of spent fuel pool cooling system without makeup flow is not a mechanism for boron dilution. Even in the unlikely event that soluble boron in the SFP is completely diluted via unborated makeup flow, a pool completely filled with maximum enriched unburned assemblies will remain subcritical by a design margin of k-effective not to exceed 0.986.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will increase the maximum enrichment limit of the fuel assemblies that can be stored in the Unit 1 SFP by taking credit for soluble boron in maintaining acceptable margins of subcriticality. Increasing the maximum enrichment limit does not create a new type of criticality accident.

Soluble boron has been maintained in the SFP water and is currently required by procedures. Therefore, crediting soluble boron in the SFP criticality analysis will have no effect on normal pool operation and maintenance. Crediting soluble boron will only result in increased sampling to verify the boron concentration. This increased sampling will not create the possibility of a new or different kind of accident.

A dilution of the SFP soluble boron has always been a possibility. However, the boron dilution event previously had no consequences, since boron was not previously credited in the accident analysis. The initiating events that were considered for having the potential to cause dilution of the boron in the SFP to a level below that credited in the criticality analyses fall into three categories: dilution by flooding, dilution by loss-of-coolant induced makeup, and dilution by loss-of-cooling system induced makeup. The spent fuel pool dilution analysis demonstrates that a dilution that could increase the rack k-effective greater than 0.95 is not a credible event. It is not credible that dilution could occur for the required length of time without operator notice, since this event would activate the high level alarm and initiate Auxiliary Building flooding. In addition, in excess of 1,043,000 gallons of unborated water must be added to the SFP to reach the minimum soluble boron concentration. This is more water volume than is contained in both pretreated water storage tanks and also more water volume than is contained in the demineralized water storage tank and both condensate storage tanks combined. Even in the unlikely event that soluble boron in the SFP is completely diluted, the SFP will remain subcritical by a design margin of k-effective will not exceed 0.986.

The proposed change will not result in any other change in the plant configuration or equipment design. Therefore, the proposed

change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The Technical Specification changes proposed by this license amendment request will provide an adequate safety margin to ensure that the stored fuel assembly array of maximum enriched fuel will always remain subcritical. Those limits are based on a plant specific criticality analysis performed for the Calvert Cliffs Unit 1 SFP, that include technically supported margins.

While the criticality analysis utilized credit for soluble boron, the SFP rack k-effective will remain less than 0.986 with no soluble boron with a 95 percent probability at a 95 percent confidence level. This substantial reduction in the SFP soluble boron concentration was evaluated and shown not to be credible. Soluble boron is used to provide subcritical margin such that the spent fuel pool k-effective is maintained less than or equal to 0.95. Since k-effective is less than or equal to 0.95, the current margin of safety is maintained.

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 proposed to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer.

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 amendments request: April 17, 2003.

Description of amendments request: The proposed amendment would (1) make 19 specific changes to the Technical Specifications actions currently requiring suspension of operations involving positive reactivity additions, and (2) revise various notes precluding reduction in boron concentration. The proposed changes follow the guidance of Technical Specification Task Force (TSTF) Change Traveler 286, Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The intent of this change is to clarify those Technical Specifications involving positive reactivity additions to the shutdown reactor so that small, controlled, safe insertions of positive reactivity will be allowed where they are now categorically prohibited, posing operational difficulties. These controlled activities could result in a slight change in the probability of an event occurring as Reactor Coolant System (RCS) manipulations that are currently prohibited would now be allowed. However, RCS manipulations are rigidly controlled to minimize the possibility of a significant reactivity increase. In addition, there is sufficient shutdown margin available in these conditions to allow for these slight reactivity changes without significantly increasing the probability of an accident previously evaluated.

The proposed change does not permit the shutdown margin required by the Technical Specifications to be reduced. While the proposed change will permit changes in the discretionary boron concentration above the technical specification requirements, this excess concentration is not credited in the Updated Final Safety Analysis Report safety analysis. Because the initial conditions assumed in the safety analysis are preserved, no increase in the consequence of an accident previously evaluated would occur. In addition, small temperature changes in the RCS impose reactivity changes by means of the moderator temperature coefficient of reactivity. These small changes are within the required shutdown margin, therefore, there is no increase in the consequence of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed amendment allows for minor plant operational adjustments without adversely impacting the safety analysis required shutdown margin. It does not involve any change to plant equipment or the shutdown margin requirements in the Technical Specifications.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would not involve a significant reduction in [a] margin of safety.

The margin of safety in Modes 3, 4, 5, and 6 is preserved by the calculated shutdown margin which prevents a return to criticality. The proposed change will permit reductions in the discretionary shutdown margin beyond the Technical Specification requirements. However, the shutdown margin required by the Technical Specifications is not changed. The proposed change only affects Reactor Coolant System temperature and boron concentration above the calculated shutdown margin. By not impacting the shutdown margin, the margin of safety is not affected.

Therefore, the proposed change will not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: February 13, 2003.

Description of amendment request: The proposed amendment would allow the use of an alternative source term (AST) methodology in accordance with 10 CFR 50.67 based on a reevaluation of the loss-of-coolant accident (LOCA) design-basis accident (DBA). Using an approved AST, the licensee has also proposed changes to increase the allowable secondary containment bypass and main steam isolation valve (MSIV) leakage limits and eliminate the MSIV leakage control system. The licensee also proposed changes to the TS Bases.

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 implementation of AST assumptions has been evaluated in a revision to the analysis of the Loss of Coolant Accident (LOCA) and an update to the analysis of the Fuel Handling Accident (FHA).

Based upon the results of the analyses, it has been demonstrated that, with the requested changes, the dose consequences of these limiting Design Basis Accidents (DBAs) are within the regulatory guidance provided by the NRC for use with the AST. This guidance is presented in 10 CFR 50.67, Regulatory Guide 1.183 [''Alternative Radiological Source Terms For Evaluating Design Basis Accidents At Nuclear Power Reactors''], and Standard Review Plan (SRP) Section 15.0.1.

The requirements for MSIV [main steam isolation valve] Leakage Control System operability for eliminating MSIV leakage to the environment are being eliminated. This is acceptable because, with the application of AST, this system is no longer credited in mitigating the consequences of a LOCA or any other DBA.

The proposed changes also increase the limits on maximum allowable leakage from

secondary containment bypass and main steam isolation valves, and on unfiltered inleakage into the Control Room. This is acceptable due to the new assumptions used in calculating Control Room and offsite dose following the affected design basis accident using the AST methodology.

The proposed changes do not affect the normal design or operation of the facility before the accident; rather, once the occurrence of an accident has been postulated, the new source term is an input to evaluate the consequence. The radiological consequences of the analyzed DBAs have been evaluated with application of AST assumptions. The results conclude that the radiological consequences remain within applicable regulatory limits. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The application of AST does not affect the design, functional performance or normal operation of the facility. Similarly, it does not affect the design or operation of any component in the facility such that new equipment failure modes are created. Elimination of the MSIV Leakage Control System cannot create a new accident because it is used as a mitigation system to limit MSIV leakage after the accident has occurred. Similarly, the use of Standby Liquid Control System to buffer suppression pool pH to prevent iodine reevolution is another mitigation function credited after the accident has occurred and; therefore, cannot create a new accident.

As such the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

This proposed license amendment involves changes from the original source term developed in accordance with Technical Information Document (TID) 14844 to a new AST, as described in Regulatory Guide 1.183. The results of the DBA analyses and the requested Technical Specification changes, are subject to revised acceptance criteria. The analyses have been performed using conservative methodologies.

Safety margins and analytical conservatisms have been evaluated and have been found acceptable. The analyzed events have been carefully selected and margin has been retained to ensure that the analysis adequately bounds postulated event scenario. The dose consequences of these limiting events are within the acceptance criteria presented in 10 CFR 50.67, Regulatory Guide 1.183 and SRP Section 15.0.1.

The margin of safety is that provided by meeting the applicable regulatory limits. The effect of relaxation of these design and Technical Specification requirements has been analyzed and doses resulting from the design basis accidents have been found to remain within the regulatory limits. The changes continue to ensure that the doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits.

Therefore, operation of Fermi 2 in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the 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: L. Raghavan.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: February 13, 2003.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) Section 5.5.10, ''Technical Specification (TS) Bases Control Program,'' to be consistent with changes made to 10 CFR 50.59, which were published in the **Federal Register** on October 4, 1999 (64 FR 53582), and which became effective March 13, 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:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes the reference to ''unreviewed safety question'' as defined in 10 CFR 50.59. Deletion of the definition of ''unreviewed safety question'' was approved by the NRC with the revision of 10 CFR 50.59. This change is administrative in nature. Consequently, the probability of an accident previously evaluated is not significantly increased. Changes to the TS Bases are still evaluated in accordance with 10 CFR 50.59. As a result, the probability or consequences of any accident previously evaluated are not significantly affected. There is no increase in the radiological dose at the site boundary for any previously evaluated accident. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (*i.e.*, no new or different types of equipment will be installed) or a change to the methods governing normal plant operation. These changes are considered administrative in nature and do not modify, add, delete, or relocate any technical requirements in the TS. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

The proposed change will not reduce a margin of safety because it has no direct effect on any of the safety analysis assumptions. Changes to the TS Bases that result in meeting the criteria in paragraph 10 CFR 50.59(c)(2) continue to require NRC approval pursuant to 10 CFR 50.59. This change is administrative in nature based on the revision to 10 CFR 50.59. 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 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: L. Raghavan.

Detroit Edison Company (DECo), Docket No. 50–341, Fermi 2, Monroe County, Michigan.

Date of amendment request: March 31, 2003.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Surveillance Requirement (SR) 3.7.3.6 associated with the verification of control room emergency filtration (CREF) system duct work unfiltered inleakage. This amendment request supercedes DECo's previous amendment request dated September 26, 2002, in its entirety. The September 26, 2002, amendment request was previously noticed in the **Federal Register** on November 26, 2002 (67 FR 70765).

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.

This license amendment proposes an alternative test for performing the (Control Room Emergency Filtration) CREF system surveillance associated with measuring the

Control Room Envelope (CRE) unfiltered inleakage. The CREF system provides a configuration for mitigating radiological consequences of accidents; however, it does not involve the initiation of any previously analyzed accident. Similarly, the implementation of compensatory measures to address the failure of the surveillance to meet the design basis unfiltered inleakage limits is required to mitigate the consequences of a radiological release. Therefore, the proposed changes cannot increase the probability of any previously evaluated accident.

The CREF system provides a radiologically controlled environment from which the plant can be safely operated following a radiological accident. Design basis accident analyses conclude that radiological consequences are within the regulatory acceptance criteria. The current TS surveillance (SR 3.7.3.6) measures inleakage from four sections of CREF system duct work outside the CRE that are at negative pressure during accident conditions. The proposed Tracer Gas test provides a measurement of CRE inleakage from all potential sources including the four sections of duct work. Measuring the CRE inleakage using Tracer Gas testing has no effect on the CREF system function. The results of Tracer Gas testing will be evaluated against the assumptions in the approved Alternative Source Term (AST) design basis accident analyses and compensatory measures will be implemented, as necessary, to ensure compliance with 10 CFR 50.67. If compliance with 10 CFR 50.67 cannot be demonstrated or if compensatory measures have been in place for more than 18 months, a conservative plant shutdown will be required to minimize risk. Therefore, the proposed changes do not significantly increase the radiological consequences of any previously evaluated accident.

Based on the above, the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the design function or operation of the system involved. The CREF system will still provide protection to control room occupants in case of a significant radioactive release. The revised TS surveillance requirements provide an alternative test method that has been widely accepted for the measurement of CRE unfiltered inleakage. The proposed changes do not introduce any new modes of plant or CREF system operation. Therefore, the proposed changes do not create the potential for a new or different kind of accident from any accident previously evaluated.

3. The changes do not involve a significant reduction in the margin of safety.

The proposed changes to the Fermi 2 TS surveillance requirements do not affect the radiological release from a design basis accident nor the postulated dose to the control room occupants as a result of the accident. The alternate surveillance test requirements provide an acceptable approach for the measurement of CRE inleakage. Safety margins and analytical conservatisms are included in the analyses to ensure that all postulated event scenarios are bounded. The proposed TS requirements continue to ensure that the radiological consequences at the control room are below the corresponding regulatory guidelines and that compliance with 10 CFR 50.67 and GDC (General Design Criterion)–19 is not affected. Therefore, the proposed changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 7, 2003

Description of amendment request: The proposed amendment would move selected Technical Specification (TS) parameters to the Core Operating Limits Reports (COLR). Specifically, the changes proposed affect TSs 2.2, ''Limiting Safety System Settings, Table 2.2–1;'' 3/4.1.1.1.1, ''Reactivity Control Systems, Boration Control, SHUTDOWN MARGIN—Modes 3, 4, and 5 Loops Filled;'' 3/4.1.1.2, ''Reactivity Control Systems, SHUTDOWN MARGIN—Cold Shutdown—Loops Not Filled;'' 3/4.2.5, ''Power Distribution Limits, DNB Parameters;'' 3/4.3.5, ''Instrumentation, SHUTDOWN MARGIN Monitor;'' 3/4.9.1.1, ''Refueling Operations, Boron Concentration;'' Section 6.9.1.6.a, ''Core Operating Limits Report, Core Operating Limits;'' and Section 6.9.1.6.b, ''Core Operating Limits Report, The Analytical Methods Used to Determine the Core Operating Limits,'' and the corresponding pages and Bases sections.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (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 relocation of cycle-specific core operating limits from the technical specifications to the COLR has no influence or impact on the probability or consequences of a Design Basis Accident. Adherence to the COLR and methodologies acceptable for establishing COLR parameters continues to be controlled by Technical Specifications. The proposed amendment still requires exactly the same actions to be taken when or if limits are exceeded. Each accident analysis addressed in the Final Safety Analysis Report (FSAR) will be examined with respect to the changes in cycle-dependent parameters, which are obtained from application of the Nuclear Regulatory Commission (NRC) approved reload design methodologies, to ensure that the transient evaluation of new core designs are bounded by previously accepted analysis. This examination, which will be performed in accordance with the requirements of 10 CFR 50.59, ensures that future designs will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to add new document references to Technical Specification Sections 6.9.1.6.b.16 and 6.9.1.6.b.17 are required to identify the most recent methodology to be used in the Millstone Unit No. 3 Small Break Loss of Coolant Accident (SBLOCA) analysis. Section 6.9.1.6.b.18 is added to describe NRC approved Overpower DT and Overtemperature DT trip function methodology. The use of these methodologies demonstrates that the acceptance criteria for SBLOCA events and Overpower DT and Overtemperature DT are met. This change has no impact on plant equipment operation. Since these changes only affect the method of analysis, they cannot affect the likelihood or consequences of accidents. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

Deleting the revision number and the date from the documents contained in Technical Specification Section 6.9.1.6.b.1 and in Technical Specification Sections 6.9.1.6.b.4 through 6.9.1.6.b.10 has no impact on the actual analytical methods used to determine the core operating limits, nor does it affect the likelihood or consequences of accidents. Therefore, this change will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated earlier, the relocation of the cycle-specific variables to the COLR, adding new document references and deleting the revision number and the date in Technical Specification Section 6.9.1.6.b have no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety related equipment, safety function, or plant operations will be altered as a result of this proposed change. The cycle specific variables are calculated using NRC-approved methods and submitted to the NRC to allow the Staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded. Therefore the proposed amendment does not in any way 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.

The proposed changes have no impact on plant equipment operation. The proposed changes do not revise any setpoints assumed in the analyses and do not affect the acceptance criteria for SBLOCA analyses. 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., Waterford, CT 06141–5127.

NRC Section Chief: James W. Clifford.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: April 10, 2003.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for the low temperature overpressure protection system. Currently, TS Surveillance Requirement (SR) 3.4.12.5 requires performance of a channel functional test for the power-operated relief valve within 12 hours of decreasing reactor coolant system (RCS) temperature to ≤ 325 °F and every 31 days thereafter. The proposed amendments would revise TS SR 3.4.12.5 to allow the first performance of this surveillance to be within 31 days prior to decreasing RCS temperature to ≤ 325 °F. The proposed amendments also would revise the frequency of the channel calibration in TS SR 3.4.12.7 from 18 months to 6 months.

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:

Pursuant to 10 CFR 50.91, Duke Power Company (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC regulations in 10 CFR 50.92. This ensures 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:

This is a revision to the Technical Specification (TS) surveillance requirement (SR) for performing the channel functional test (CFT) for the pressurizer [power] [..] operated relief valve (PORV). As such, changing the requirement to perform the first CFT before entering the Low Temperature Overpressure Protection (LTOP) region, rather than after LTOP is required, eliminates removing the PORV from service, in the mode of applicability for the performance of the CFT. This change will decrease the probability of a low temperature overpressurization of the reactor vessel, thereby increasing safety and reducing risk, by maintain(ing) both trains (active and passive) of the LTOP System operable. The change to the frequency for performance of SR 3.4.12.7 is being done to ensure the calibration is performed in a time frame supported by current analysis. The method of test is not changed, only the frequency. This reduction in frequency will not significantly increase the probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

This revision will not impact the LTOP evaluation analysis. The timeframe to perform the CFT for the PORV will not change the operation of the PORV or its function during accident conditions. No new or different accidents result from performing the CFT prior to entering LTOP conditions. The revision to SR 3.4.12.7 only changes the frequency of the testing. The method of test is not changed. This change has no effect on the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety:

The proposed revision will perform the CFT within 31 days prior to entering LTOP conditions, rather than performing the test once LTOP conditions are entered. This allows the CFT, which causes the PORV to be inoperable for a short period of time, to be performed prior to reaching the plant conditions where the PORV is relied upon for LTOP. Performing the CFT within 31 days prior to decreasing RCS temperature to < 325 °[F], rather than after entering these conditions, will not change the margin of safety. Oconee calculations show that a recalibration interval of 6 months for the Reactor Coolant System (RCS) low range pressure instrumentation results in a single-sided 95/95 probability confidence limit of 9.4 psig. This result is bounded by the instrument uncertainty assumed in the LTOP evaluation analysis. The frequency change for SR 3.4.12.7 from 18 months to 6 months does not affect the method of test performance. It only decreases the allowed time between performances to reflect current Oconee analysis. This will not significantly reduce 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: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: July 5, 2002, as supplemented August 13, 2002.

Description of amendment request: The proposed amendment would relocate portions of Technical Specification (TS) 3/4.6.B, ''Primary System Boundary—Coolant Chemistry,'' from the TSs to the Updated Final Safety Analysis Report (UFSAR). The portions of the TS that would be relocated to the UFSAR are the reactor coolant chemistry requirements for conductivity and chloride concentration. Specifically, TSs 3/4.6.B.2, 3/4.6.B.3, and 3.6.B.4 would be relocated to the UFSAR.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (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.

Response: No. The proposed change is administrative in nature and does not involve the modification of any plant equipment or affect basic plant operation. Conductivity and chloride limits are not assumed to be an initiator of any analyzed event, nor are these limits assumed in the mitigation of consequences of accidents.

Therefore, the proposed 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?

Response: No. The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions. Therefore, the proposed 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?

Response: No. The proposed change represents the relocation of current Technical

Specification requirements to the UFSAR, based on regulatory guidance and previously approved changes for other stations. The proposed change is administrative in nature, does not negate any existing requirement, and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by requirements that are retained, but relocated from the Technical Specifications to the UFSAR. 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: J.M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: James W. Clifford.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 1, 2003.

Description of amendment request: The proposed amendment would modify the surveillance testing requirements for the containment spray system (CSS) by deleting the requirement to verify the position of valves that are locked, sealed, or otherwise secured in their correct position and replacing the quantitative allowable pump degradation value with a requirement to verify the pumps perform in accordance with the Inservice Testing Program.

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?

Response: No.

Analyzed events are assumed to be initiated by the failure of plant structures, systems, or components. Altering the surveillance requirements for the CSS does not increase the probability that a failure leading to an analyzed event will occur. The CSS components are passive until an actuation signal is generated. This change does not increase the failure probability of the CSS components. Therefore, the probability of occurrence for a previously analyzed accident is not significantly increased.

The CSS is primarily designed to mitigate the consequences of a loss of coolant accident (LOCA) or main steam line break (MSLB) accident. The proposed change does not affect any of the assumptions used in the deterministic LOCA or MSLB analyses. Hence the consequences of accidents previously evaluated do not change.

Therefore, the change associated with modifying the CSS surveillance requirements does not involve an increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not change the design or configuration of the plant. No new equipment is introduced, nor will any installed equipment be operated in a new or different manner. No changes are proposed to the plant's operating parameters or setpoints at which protective or mitigative actions are initiated. Additionally, no substantive changes are proposed to the procedures which ensure the plant remains within analyzed limits or the procedures relied upon to respond to off-normal events. As such, no new failure modes are being introduced. The proposed change does not alter assumptions made in the safety analysis or licensing basis.

Therefore, the proposed change does 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 associated with modifying the surveillance requirements for the CSS does not affect the limiting conditions for operation used in the deterministic analysis to establish the margin of safety. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. None of these are adversely impacted by the proposed change. Sufficient equipment remains available to actuate upon demand for the purpose of mitigating a transient event.

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: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 11, 2003.

Description of amendment request: The proposed amendment will revise and relocate Surveillance Requirement (SR) 4.0.5 and SR 4.4.9 to the administrative section of the Technical Specifications (TS) under sections 6.5.8 and 6.5.7, respectively. The proposed amendment will also relocate TS 3.4.9, ''Reactor Coolant System Structural Integrity'' and its Bases to the Waterford Steam Electric Station, Unit 3 (Waterford 3) Technical Requirements Manual (TRM). Additionally, the proposed amendment extends the Waterford 3 flywheel volumetric examination interval to ten years.

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?

Response: No.

The proposed change to relocate SR 4.0.5 to the administrative section of the TSs, including modifications to the wording to make it consistent with NUREG–1432, will not reduce the current testing and inspection requirements. The performance of a code (American Society of Mechanical Engineers (ASME) Boiler & Pressure Vessel Code) inservice test is not an accident initiator. Verbally issuing relief to the ASME Code by the NRC (Nuclear Regulatory Commission) staff in lieu of written relief does not reduce assurance of the health and safety of the public since the NRC staff still reviews the basis for the relief on its technical merit and the NRC staff still obtains management approval prior to granting the relief.

Inspections of the reactor coolant pump (RCP) flywheels are conducted to detect a flaw in the flywheel prior to it becoming a missile that could damage other portions of the facility. The fracture mechanics analyses conducted as part of NRC approved Topical Report SIR–94–080–A, Rev(ision) 1 shows that a conservatively sized pre-existing crack will not grow to a flaw size necessary to create flywheel missiles within the current or extended life of the facility thus the flywheel will remain intact and perform its function to reduce the rate of decay of coolant flow during a postulated loss of power to the RCP motor. This analysis conservatively assumes minimum material properties, maximum flywheel speed, location of the flaw in the highest stress area, and a number of startup and shutdown cycles higher than expected. Since a conservative flaw in the RCP flywheels will not grow to the allowable flaw size under large break LOCA (loss-of-coolant

accident) conditions over the life of the plant, reducing the inspection frequency of the flywheels will not significantly increase the probability or consequences of an accident previously evaluated.

The change to move the surveillance requirements for the RCP flywheels to the programs section of the technical specifications is administrative and has no impact on probability or consequences of an accident.

The change to move TS 3.4.9 to the Waterford 3 TRM will have no adverse effect on plant operation or the availability or operation of any accident mitigation equipment. Changes to the TRM are controlled in accordance with 10 CFR 50.59. Therefore, moving TS 3.4.9 to the Waterford 3 TRM will not adversely impact [as] an accident initiator and can not cause an accident.

Therefore, the proposed changes do 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?

Response: No.

The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. These changes do not introduce any new failure modes.

Therefore, the proposed change does 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 testing and inspection requirements contained in TS 4.0.5 are governed by 10 CFR 50.55a, ''Codes and Standards.'' The 10 CFR requirements to perform the ASME code testing and inspections will not be reduced by the proposed change. The inspections and tests will continue to be performed as they are currently. The proposed change has no impact on plant equipment operation.

The fracture mechanics analysis conducted in support of extending the RCP flywheel volumetric examination interval from three years to ten years shows that significant conservatism has been used for calculating the allowable flaw size, critical flaw size, and crack growth rate in the RCP flywheels. These include minimum material properties, maximum flywheel accident speed, location of the flaw in the highest stress area, and a number of startup/shutdown cycles eight times greater than expected. Since a postulated flaw in a Waterford 3 flywheel will not grow to the allowable flaw size under normal operating conditions or to the critical flaw size under loss of coolant accident conditions over the life of the plant, reducing the examination requirements for the detection of such cracks over the life of the plant will not involve a significant reduction in the margin of safety. The proposed change has no impact on plant equipment operation.

The change to move the surveillance requirements for the RCP flywheels to the programs section of the technical specifications is administrative and has no impact on plant operation.

Relocation of TS 3.4.9 to the TRM does not imply any reduction in its importance in ensuring that the structural integrity and operational readiness of ASME Code Class 1, 2, and 3 components will be maintained at an acceptable level throughout the life of the plant. The proposed change has no impact on plant operation.

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: N.S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: March 31, 2003.

Description of amendment request: The proposed amendments would revise Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the proposed change will modify TS 5.7, ''High Radiation Area,'' by incorporating the wording and requirements from NUREG–1434, ''Standard Technical Specifications General Electric Plants, BWR/6,'' Revision 2, dated June 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:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will modify LaSalle County Station (LSCS) TS 5.7, ''High Radiation Area,'' by incorporating into the TS the corresponding wording and requirements from NUREG–1434, ''Standard Technical Specifications General Electric Plants, BWR/6,'' Revision 2, dated June 2001. TS 5.7 establishes the administrative controls on entry into high radiation areas. High radiation area administrative controls are not a precursor to accidents previously evaluated. Thus, the proposed change does not have any effect on the probability of an accident previously evaluated.

The proposed change in administrative controls on entry into a radiation area does not affect the ability of LSCS to successfully respond to previously evaluated accidents and does not affect radiological assumptions used in the evaluations. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change incorporates corresponding wording and requirements from NUREG–1434, into the LSCS TS. The LSCS evaluation of the proposed change concluded the following:

- Both the proposed and current TS 5.7.1 describe the requirements for access into areas that have radiation levels that exceed 100 mrem/hr but are less than or equal to 1000 mrem/hr. The proposed and current TS 5.7.1 are considered to have equivalent level access controls as both contain the need to provide a barricade, conspicuously post the area and issue an RWP to control entrance to the area.
- Proposed TS 5.7.2 and current TS 5.7.4 describe the requirements for access into areas that have radiation levels that exceed 1000 mrem/hr. Proposed TS 5.7.2 and current TS 5.7.4 are considered to have equivalent level access controls as both require these areas to be locked. For those areas where locking is not practical, proposed TS 5.7.2 and current TS 5.7.4 both require the area to be barricaded, conspicuously posted, and have an activated flashing light.
- The proposed change includes the deletion of the use of computer controlled doors in current TS 5.7.2. This description is being removed as computer controlled doors are no longer utilized at LSCS. Rather, manual locking mechanisms are used on doors providing an equivalent level of control.
- Current TS 5.7.4 also discusses ''high-high'' radiation areas. The term ''high-high'' radiation area is a legacy term that is being deleted from the proposed TS. This is an administrative change only to remove an outdated term.

Therefore, LSCS has determined that the proposed change provides an equivalent level of protection as that currently provided.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the above, Exelon Generation Company concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of amendment request: March 11, 2003.

Description of amendment request: The proposed amendment revises the BVPS–1 and 2 Technical Specifications (TSs) to apply the Westinghouse best-estimate large break loss-of-coolant accident (LOCA) methodology to BVPS–1 and 2. The request is contingent upon Nuclear Regulatory Commission (NRC) approval of the licensee's amendment request for conversion of the BVPS–1 and 2 containments from sub-atmospheric to atmospheric which had previously been requested by letter dated June 5, 2002, and which is currently under NRC staff review.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. No physical changes are required as a result of implementing best-estimate loss of cooling accident (LOCA) methodology and associated technical specification changes. The plant conditions assumed in the analysis are bounded by the design conditions for all equipment in the plant. Therefore, there will be no increase in the probability of a loss of cooling accident. The consequences of a LOCA are not being increased, since it is shown that the emergency core cooling system is designed so that its calculated cooling performance conforms to the criteria contained in 10 CFR 50.46, Paragraph b. No other accident is potentially affected by this change.

Therefore, the proposed 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 previously evaluated?

No. There are no physical changes being made to the plants. No new modes of plant operation are being introduced. The parameters assumed in the analysis are within the design limits of the existing plant equipment. All plant systems will perform as designed during the response to a potential accident.

Therefore, the proposed change does 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?

No. It has been shown that the methodology used in the analysis would more realistically describe the expected behavior of plant systems during a postulated loss of coolant accident. Uncertainties have been accounted for as required by 10 CFR 50.46. A sufficient number of loss of coolant accidents with different break sizes, different locations and other variations in properties are analyzed to provide assurance that the most severe postulated loss of coolant accidents are calculated. It has been shown by analysis that there is a high level of probability that all criteria contained in 10 CFR 50.46, Paragraph b are met.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan

Date of amendment request: March 27, 2003.

Description of amendment request: The proposed amendment would amend Unit 2 Technical Specification (TS) Table 3.3–4 and the P–11 setpoint in the Engineered Safety Features Interlock Table as follows:

1. Revise the low pressurizer pressure safety injection (SI) trip setpoint from its current value of greater than or equal to 1900 pounds per square inch gauge (psig), to greater than or equal to 1815 psig.

2. Revise the low pressurizer pressure SI allowable value from greater than or equal to 1890 psig, to greater than or equal to 1805 psig.

3. Revise the P–11 setpoint from its current value of greater than or equal to 2010 psig, to greater than or equal to 1915 psig.

4. Make format changes to the affected TS pages that improve appearance but do not affect any 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:

1. Does the proposed change involve a significant increase in the probability or the consequences of an accident previously evaluated?

Response: No.

[Indiana Michigan Power Company] (I&M) proposes changing the low pressurizer pressure SI trip setpoint, the low pressurizer pressure SI allowable value, the P–11 setpoint, and the format of the associated pages. Neither the change to the low pressurizer pressure SI trip setpoint value and the SI allowable value nor the change to the P–11 setpoint value alter any safety-related components or the means of accomplishing a safety-related function. The change in the values is supported by analyses that demonstrate that applicable acceptance criteria are met when SI is initiated at 1700 psig for a (loss-of-coolant accident) LOCA, a main steam system depressurization event, and a feedwater line break. Because the acceptance criteria are met, there is no significant increase in the consequences of an accident. The format changes are intended to improve readability and appearance, and do not alter any requirements. Thus, neither the probability of an accident nor the consequences of an accident are 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.

I&M proposes changing the low pressurizer pressure SI trip setpoint, the low pressurizer pressure SI allowable value, the P–11 setpoint, and the format of the associated pages. Neither the change to the low pressurizer pressure SI trip setpoint value and the SI allowable value nor the change to the P–11 setpoint value involve changing the design function of any component, and a change in any of the values cannot initiate an accident. The format changes are intended to improve readability and appearance, and do not alter any requirements. Thus, no new accident initiators are introduced, and the possibility of a new or different kind of accident is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

I&M proposes changing the low pressurizer pressure SI trip setpoint, the low pressurizer pressure SI allowable value, the P–11 setpoint, and the format of the associate pages. The low pressurizer pressure instrument is credited for activating the engineered safety features in the event of a LOCA, a main steam system depressurization event, or a feedwater line break. The low pressurizer pressure SI trip setpoint value and the low pressurizer pressure SI allowable value have been selected to insure that the engineered safety features will be activated as assumed in the safety analysis. Present margins continue to be maintained because the applicable accident analyses criteria continue to be met. No margins of safety are associated with the P–11 setpoint value. The format changes are intended to improve readability and appearance, and do not alter any requirements. Thus, 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 requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: April 24, 2003.

Description of amendment request: Eliminate the requirement for continuous Control Room manning when fuel is stored in the fuel storage pool.

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 amendment involve a significant increase in the probability or consequences of an accident previously evaluated? Involve a significant increase in the probability or consequence of an accident previously evaluated.

Response: No.

The Defueled Safety Analysis (DSAR) identifies five categories of events: spent fuel criticality accidents, a fuel handling accident, a spent fuel cask drop, spent fuel pool accidents, and a low level waste release incident. There are no active controls in the control room that are required to respond to these events. Actions to mitigate the consequences of these events are taken outside the control room. Emergency response is not adversely affected by this proposed change because the control room is still available to the emergency response team and communications capability and timeliness will not be affected. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The configuration, operations and accident response of the systems, structures or components that support safe storage of the spent fuel are unchanged by the proposed change to the technical specifications. Current site surveillance requirements ensure frequent and adequate monitoring of system and component functionality. Systems in the Spent Fuel Pool Island will continue to be operated in accordance with current design requirements and no new components or system interactions have been identified. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed change. The proposed technical specification change does not have an adverse affect on any system related to safe storage of spent fuel. Therefore, the proposed technical specifications change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

All design basis accident acceptance criteria will continue to be met. The margin of safety relative to the cooling of the spent fuel is unaffected by the proposed changes as the spent fuel pool parameters will continue to be monitored at the same frequency as assumed in the accident analysis. The ability of the shift crew to respond to abnormal or accident conditions is unaffected by the proposed change since all controls are located in or near the fuel building and any necessary communications will be handled by the on-shift staff and/or DERO. Therefore, it is concluded that the proposed TS change does not involve a significant reduction in the margin of safety

Based on the above, Maine Yankee concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Attorney for licensee: Joe Fay, Esquire, Maine Yankee Atomic Power Company, 321 Old Ferry Road, Wiscasset, Maine 04578.

NRC Section Chief: Claudia M. Craig.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 8, 2002.

Description of amendment request: The license amendment request proposes to change the title of (a) Shift Supervisor to Shift Manager, (b) ''Plant Manager'' to ''plant manager,'' (c) ''Vice President—Nuclear'' to ''corporate officer with direct responsibility for the plant,'' (d) ''Radiological Manager'' to ''radiological manager,'' (e) ''Operations Supervisor'' to ''operations supervisor'' and (f) ''Shift Radiological Protection/Chemistry Technician'' to ''radiation protection technician.'' This proposal includes an Updated Safety Analysis Report (USAR) reference correction resulting from the USAR Rebaseline Project and a correction to the title ''Shift Technical Advisor'' to ''Shift Technical Engineer'' in Technical Specification (TS) Section 5.3.1 so as to be consistent with the title used in TS Section 5.2.2.f. These changes do not eliminate any of the qualifications, responsibilities, or requirements for these positions.

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?

The title of Shift Manager better conveys the appropriate level of responsibility and authority required of the position. The use of generic personnel titles and correction of the USAR reference are strictly administrative. The qualifications, training, duties and experience required of the individuals remain unchanged. The USAR section to be referenced is physically the same section that was referenced before the USAR renumbering. The requested changes do not

involve any change to the design basis of the plant or any structure, system, or component. Therefore, these 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?

There will be no physical alterations to the plant configuration. No changes in operating mode or limits are proposed. The qualifications, training, duties and experience required of the individuals remain unchanged. The USAR section to be referenced is physically the same section that was referenced before the USAR renumbering. Therefore, these proposed changes do 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 the margin of safety?

The proposed change in titles and USAR reference are strictly administrative. The qualifications, training, duties and experience required of the individuals remain unchanged. The USAR section to be referenced is physically the same section that was referenced before the USAR renumbering. The proposed changes do not change any license condition or Technical Specifications safety limit or limiting condition for operation. The changes do not involve modification of the design or operation of any plant system involved with controlling the release of radioactivity to the environment. Therefore, these changes do not involve a significant reduction in a margin of safety.

Based on the above, Nebraska Public Power District concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of ''no significant hazards consideration'' is justified.

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 R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: May 2, 2003.

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) by replacing the existing Reactor Coolant System (RCS) pressure and temperature (P/T) limit curves for in-service leakage and hydrostatic testing, non-nuclear heatup and cooldown, and criticality (Figure 3.4.9–1, ''Pressure Versus Minimum Temperature Valid to Thirty-two Full Power Years, per Appendix G of 10 CFR 50'') with new, updated P/T limits curves. The replacement curves were generated using an NRC-approved methodology (General Electric Report NEDC–32983P) for determining the neutron fluence on the Reactor Pressure Vessel (RPV) and extends the RPV beltline region to encompass a new limiting component, the recirculation inlet nozzle. The change to Figure 3.4.9–1 would also delete the existing notation that states: ''(Interim Approval Until September 1, 2003).''

The licensee's application for amendment dated May 2, 2003, supersedes and withdraws a previous application dated February 28, 2003, for which the NRC has published a notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for hearing in the **Federal Register** (68 FR 12954, dated March 18, 2003).

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 amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The P/T limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed by the (American Society of Mechanical Engineers Boiler and Pressure Vessel Code) ASME Code and 10 CFR 50 Appendix G and H and associated guidance documents, such as Regulatory Guide 1.99, Rev. 2, as restrictions on normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause non-ductile failure of the reactor coolant pressure boundary. Thus, they ensure that an accident precursor is not likely. Hence, they are included in the TS as satisfying Criterion 2 of 10 CFR 50.36(c)(2)(ii). The revision of the numerical value of these limits, *i.e.*, new curves, using an NRC-approved methodology, does not change the existing regulatory requirements, upon which the curves are based. Thus, this revision will not increase the probability of any accident previously evaluated.

The proposed change does not alter the design assumptions, conditions, or configuration of the facility or the manner in which the facility is operated or maintained. The proposed changes will not affect any other System, Structure or Component (SSC) designed for the mitigation of previously analyzed events. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. Thus, the proposed revision of the existing numerical values with the updated figure for the RCS P/T limits, which are based upon an NRC-approved methodology for calculating the neutron fluence on the RPV and new limiting component, will not increase the consequences of any previously evaluated accident.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the processes governing normal plant operation. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice. (Nuclear Management Company, LLC) NMC is only requesting to revise the existing numerical values and update the TS figure for the RCS P/T limits based upon an NRC-approved methodology for calculating the neutron fluence on the RPV, and to reflect a new limiting component. The curves continue to be based upon ASME Code Case N–640, which has been previously approved for use at the [Duane Arnold Energy Center] DAEC.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed amendment will not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which Safety Limits, Limiting Safety System Settings or Limiting Conditions for Operation are determined. The setpoints at which protective actions are initiated are not altered by the proposed changes. Sufficient equipment remains available to actuate upon demand for the purpose of mitigating an analyzed event. NMC is only requesting to revise the existing numerical values and update the TS figure for the RCS P/T limits based upon an NRC-approved methodology for calculating the neutron fluence, NEDC–32983P-A. The new curves also reflect the addition of a new limiting component, the recirculation inlet nozzle (N2). No other changes to the Limiting Conditions for Operation or any Surveillance Requirements of Technical Specification 3.4.9 are proposed.

10 CFR 50, Appendix G specifies fracture toughness requirements to provide adequate margins of safety during operation over the service lifetime. The values of adjusted reference temperature and upper shelf energy are expected to remain within the limits of Regulatory Guide 1.99, Revision 2 and Appendix G of 10 CFR 50 for at least 32 effective full power years (EFPY) of operation. The safety analysis supporting this change continues to satisfy the ASME Code, including ASME Code Case N–640, and 10 CFR 50, Appendices G and H requirements and associated guidance documents, such as Regulatory Guide 1.99, Rev. 2. Thus, the

proposed changes will not significantly reduce any margin of safety that currently exists.

Based upon the above, NMC has determined that the proposed amendment will not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based upon 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: Jonathan Rogoff, Esquire, General Counsel, NMC, LLC, 700 First St., Hudson, WI 54016.

NRC Section Chief: L. Raghavan.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 13, 2003.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (TSs) and 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 changes are based on NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, ''Elimination of Requirements for a Post Accident Sampling System (PASS).'' The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413, 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 March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated March 13, 2003.

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:

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 the PASS requirements from TSs (and other elements of the licensing bases) does not involve a significant increase in 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 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 radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in 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.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: March 21, 2003.

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) Section 5.5.1, ''Offsite Dose Calculation Manual (ODCM),'' to remove reference to the Plant Operations Review Committee review and acceptance of licensee initiated changes to the ODCM.

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 change for TS section 5.5.1.b removes the reference to the Plant Operations Review Committee review and acceptance of licensee initiated changes to the ODCM. This change is an administrative change and does not change plant design or responses.

The proposed change does not involve changing any structure, system, or component, or affect reactor operations. It is not an initiator of an accident and does not change any existing safety analysis previously analyzed in the UFSAR. As such, the proposed change does not involve a significant increase in the probability of an accident previously evaluated. Since the proposed change does not alter the plant design, it does not involve a significant increase in the 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 for TS section 5.5.1.b removes the reference to the Plant Operations Review Committee review and acceptance of licensee initiated changes to the ODCM. This change is an administrative change and does not change plant design or responses.

The proposed change will not alter any plant design basis or postulated accident. In addition, the proposed change does not impact any plant systems or components.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed change for TS section 5.5.1.b removes the reference to the Plant Operations Review Committee review and acceptance of licensee initiated changes to the ODCM. This change is an administrative change and does not change plant design or responses. The proposed change does not impact accident offsite dose, containment pressure or temperature, emergency core cooling system setpoints, reactor protection system settings or any other parameter that could affect a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: John A. Nakoski.

Tennessee Valley Authority (TVA), Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: April 11, 2003 (TS–424).

Description of amendment request: The proposed amendments would reduce the number of Emergency Core Cooling System subsystems that are available in response to certain design basis loss-of-coolant accident (LOCA) scenarios because of TVA's planned restart of Unit 1. The licensee stated that the reduced number has been analyzed and is consistent with the current approved LOCA analysis methodology. The amendments are needed to eliminate the potential for overloading a shutdown board or a diesel generator when both Units 1 and 2 are in-service. The reduction requires a change to the Updated Final Safety Analysis Report.

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 amendments and Technical Specification changes involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendments revise the actual number of Emergency Core Cooling System (ECCS) subsystems that are available in response to certain design basis Loss of Coolant Accident (LOCA) scenarios. The associated modifications also result in a revision to the number of required channels for the Low Pressure Coolant Injection (LPCI) pump start time delay relay function specified in Technical Specifications. The proposed amendments and Technical Specification changes do not affect any accident precursors. Therefore, the probability of an evaluated accident is not increased.

The reduction in the number of ECCS subsystems that are actually available in response to the bounding LOCA case (A recirculation suction line break with an assumed battery failure) will now be the same as the number of ECCS subsystems evaluated in the current BFN SAFER/GESTR–LOCA analysis. The ECCS performance for the bounding LOCA case has previously been evaluated using the approved SAFER/GESTR–LOCA application methodology and is described in Updated Final Safety Analysis Report (UFSAR) Sections 6.5 and 14.6.3. The revision to the number of required channels for the LPCI pump start time delay relay function does not affect the LOCA analysis. The requirements of 10 CFR 50.46 and Appendix K are met. Therefore, the proposed amendments and Technical Specification changes will not significantly increase the consequences of an accident previously evaluated.

2. Do the proposed amendments and Technical Specification changes create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendments revise the number of ECCS subsystems that are actually available in response to certain design basis LOCA scenarios. The proposed Technical Specification changes revise the number of required channels for the LPCI pump start time delay relay function. The proposed amendments and Technical Specification changes do not introduce new equipment, which could create a new or different kind of accident.

No new external threats, release pathways, or equipment failure modes are created. Therefore, the implementation of the proposed amendments and Technical Specification changes will not create a possibility for an accident of a new or different type than those previously evaluated.

3. Do the proposed amendments and Technical Specification changes involve a significant reduction in a margin of safety?

No. The proposed amendments and Technical Specification changes revise the number of ECCS subsystems that are actually available in response to certain design basis LOCA scenarios. The reduction in the number of ECCS subsystems that are actually available in response to the bounding LOCA case (A recirculation suction line break with an assumed battery failure) will now be the same as the number of ECCS subsystems evaluated in the current BFN SAFER/GESTR–LOCA analysis. The ECCS performance for the bounding LOCA case has previously been evaluated using the approved SAFER/GESTR–LOCA application methodology. The revision to the number of required channels for the LPCI pump start time delay relay function does not affect the LOCA analysis. The requirements of 10 CFR 50.46 and Appendix K are met. Therefore,

the proposed license amendments and Technical Specification 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: Allen G. Howe.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: April 15, 2003 (TS 409).

Description of amendment request: The proposed amendments are applicable to BFN Units 1, 2, and 3. They would revise Technical Specification (TS) Limiting Condition for Operation 3.7.3, Control Room Emergency Ventilation (CREV) System, and its associated TS Bases to provide specific conditions and required actions that address a degraded main control room boundary. The proposed changes are consistent with the TS Task Force Traveler 287, Revision 5.

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 amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

2. No. The proposed TS change involves the CREV system, which provides a radiological controlled environment from which the plant can be operated following a design basis accident (DBA). The CREV system is not assumed to be the initiator of any analyzed accident and cannot not [sic] affect the probability of accidents.

The proposed change allows the main control room boundary to be opened intermittently under administrative control, and allows 24 hours to restore the main control room boundary to Operable status before requiring the plant to perform an orderly shutdown. The 24-hour Completion Time is reasonable based on the low probability of a DBA occurring during this time period and TVA's commitment to implement, via administrative controls, appropriate compensatory measures consistent with the intent of 10 CFR part 50, Appendix A, General Design Criteria (GDC) 19. These compensatory measures minimize the consequences of an open main control room boundary and assure that CREV system can continue to perform its function. As such, these changes will not affect the function or operation of any other systems, structures, or components.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change allows the main control room boundary to be opened intermittently under administrative control and allows 24 hours to restore the main control room boundary to Operable status before requiring the plant to perform an orderly shutdown. The 24-hour Completion Time is reasonable based on the low probability of a DBA occurring during this time period and TVA's commitment to implement, via administrative controls, appropriate compensatory measures consistent with the intent of 10 CFR part 50, Appendix A, GDC 19. These compensatory measures minimize the consequences of an open main control room boundary and assure that the CREV system can continue to perform its function. As such, these changes will not affect the function or operation of any other systems, structures, or components.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed change allows the main control room boundary to be opened intermittently under administrative control and allows 24 hours to restore the main control room boundary to Operable status before requiring the plant to perform an orderly shutdown. The 24-hour Completion Time is reasonable based on the low probability of a DBA occurring during this time period and TVA's commitment to implement, via administrative controls, appropriate compensatory measures consistent with the intent of 10 CFR part 50, Appendix A, GDC 19. These compensatory measures minimize the consequences of an open main control room boundary and assure that the CREV system can continue to perform its function such that compliance with GDC 19 is maintained.

Therefore, the proposed TS change does not involve a reduction in the margin of safety.

Based on the above, TVA concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

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: Allen G. Howe.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant (BFN), Units 2 and 3, Limestone County, Alabama

Date of amendment request: April 14, 2003 (TS 425).

Description of amendment request: The proposed amendments would revise two Technical Specification (TS) Limiting Conditions for Operation 3.3.4.1, ''End Of Cycle Recirculation Pump Trip (EOC–RPT) Instrumentation,'' and 3.7.5, ''Main Turbine Bypass System,'' to reference additional core limits adjustment factors for linear heat generation rate for equipment out-of-service conditions. Also, Section b of TS 5.6.5, ''Core Operating Limits Report (COLR),'' would be revised to add references to the Framatome Advanced Nuclear Power (FANP) analytical methods that will be used in the upcoming fuel cycles to determine core operating limits. The above TS changes are needed to support a transition to the use of FANP fuel, and FANP core design and analysis services.

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 amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Core operating limits are established to support requirements, which in turn ensure that fuel design limits are not exceeded during any conditions of operating transients or accidents. The methods used to determine the limits for each operating cycle are based on methods previously found acceptable by the NRC and are required to be listed in COLR TS Section 5.6.5.b. Accordingly, a change to TS Section 5.6.5.b is requested to include FANP methods in the list of NRC-approved methods applicable to BFN. This TS change also adds provisions that ensure core thermal limits adjustment factors are applied for equipment out-of-service conditions associated with the use of FANP methods for transient analyses. The application of these NRC-approved methods will continue to ensure that acceptable operating limits are established and applied for protection of fuel cladding integrity during transient and accidents.

The requested TS changes do not involve any plant modifications or operational changes that could affect system reliability,

performance, or possibility of operator error. The requested changes do not affect any postulated accident precursors, do not affect any accident mitigation systems, and do not introduce any new accident initiation mechanisms.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The core operating limits and required limits adjustments for equipment out-of-service conditions will continue to be determined using methodologies that have been approved by the NRC. The limits derived from approved methodologies will provide adequate margins of safety. The proposed changes do not involve any new modes of operation, any changes to setpoints, or any plant modifications, and do not result in any new precursors to an accident.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety.

No. The core operating limits and required limits adjustments for equipment out-of-service will continue to be determined using methodologies that have been approved by the NRC. On this basis, the implementation of the changes 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: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: May 1, 2003.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.8.7, ''Inverters—Operating.'' The TS as currently written requires two inverters for each of the four instrument channels. The revision changes the requirement to one inverter for each of the four channels. The amendment is the initial phase of a project that will replace the vital inverters to achieve improvements in the reliability of the 120V AC Vital Instrument Power 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 change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed revisions to WBN's Vital AC Power System do not alter the safety functions of the Vital Inverters or the Unit 1 and Unit 2 120V AC Vital Instrument Power Boards. The initial conditions for the Design Basis Accidents (DBAs) defined in the WBN Updated Final Safety Analysis Report (UFSAR) assume the Engineered Safety Feature (ESF) systems are operable. The vital inverters are designed to provide the required capacity, capability, redundancy, and reliability to ensure the availability of necessary power to vital instrumentation so that the fuel, reactor coolant system, and containment design limits are not exceeded. Adding the Unit 2 loads to the Unit 1 inverters does not alter the accident analyses as long as the Unit 1 inverters are capable of handling the additional loads and channel separation is maintained. Design calculations document that the Unit 1 inverters have adequate capacity to support the addition of the Unit 2 loads and no changes are proposed that will impact the separation of the Vital AC Power System. In addition, the redundant capabilities of the Vital AC System as currently described in the UFSAR are not impacted by the proposed amendment.

The inverters and the associated 120V AC Vital Instrument Power Boards are utilized to support instrumentation that monitor critical plant parameters to aid in the detection of accidents and to support the mitigation of accidents, but are not considered to be an initiator of design basis accidents. Based on this and the preceding information, the proposed amendment 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?

No. When implemented, the proposed TS amendment will allow the Unit 2 Vital Instrument Power Boards to receive their uninterruptible power supply (UPS) power from the Unit 1 inverters instead of the Unit 2 inverters. Calculations have verified that the additional load will not affect the ability of the Unit 1 inverters to perform their intended safety functions. In addition, the inverters and the 120V AC Vital Instrument Power Boards are not considered to be an initiator of a design basis accident. These components provide power to instrumentation that supports the identification and mitigation of accidents as well as system control functions during normal plant operations. The functions of the inverters are not altered by the proposed TS change and will not create the possibility of a new or different accident. Further, the addition of the Unit 2 loads to the Unit 1 inverters is the principal change to the inverter system and this change is bounded by previously evaluated accident analyses. 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 change involve a significant reduction in a margin of safety?

No. The plant setpoints and limits that are utilized to ensure safe operation and detect accident conditions are not impacted by the proposed TS amendment. The inverters and the 120V Vital Instrument Power Boards will continue to provide reliable power to safety-related instrumentation for the identification and mitigation of accidents and to support plant operation. Therefore, the margin of safety is not reduced.

Based on the above, TVA concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of no significant hazards consideration is justified.

In conclusion, based on the considerations discussed above, (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

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: Allen G. Howe.

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, Public File Area 01F21, 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/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 1, 2002, as supplemented on October 18, 2002, and April 17, 2003.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.7.1.1, ''Plant Systems: Turbine Cycle Safety Valves,'' to reflect results of a reanalysis of overpressurization events to allow plant operation, at corresponding reduced power levels, with up to four main steam safety valves in each main steam line inoperable.

Date of issuance: May 7, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 275.

Facility Operating License No. DPR–65: This amendment revised the TSs.

Date of initial notice in ***Federal Register***: September 17, 2002 (67 FR 58638). The supplements dated October 18, 2002, and April 17, 2003, provided additional information which clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 7, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: September 30, 2002, as supplemented by letters dated October 17, 2002 and April 2, 2003.

Brief description of amendments: The amendments revise the Technical Specification to: (1) Modify the Surveillance Requirement to be consistent with the design of the reactor building access openings, (2) modify the frequency of the Surveillance Requirement for visual inspections for the exposed interior and exterior surface of the reactor building, and (3) modify the administrative controls for the containment leakage rate testing program.

Date of issuance: May 8, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 212/193.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: November 12, 2002 (67 FR 68733). The supplement dated October 17, 2002, and April 12, 2003, provided clarifying information that did not change the scope of the September 30, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 8, 2003.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: September 3, 2002, as supplemented by letters dated November 27, 2002, and April 17, 2003.

Brief description of amendment: The amendment allows the addition of depleted uranium to the fuel assembly composition described in Technical Specification (TS) 4.2.1. The amendment also revises TS 5.6.5.b to incorporate the references to the analytical methods to be used to determine core operating limits and removes those references that will no longer be used. The amendment also allows the format for those document references to be revised as described in the staff-approved Industry/TSTF Standard Technical Specification Change Traveler, TSTF–363, ''Revise Topical Report References in ITS 5.6.5, COLR.''

Date of issuance: May 12, 2003.

Effective date: May 12, 2003, and shall be implemented within 30 days from the date of issuance.

Amendment No.: 185.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: October 15, 2002 (67 FR 63693). The November 27, 2002, and April 17, 2003, supplemental letters provided additional clarifying information, did not change the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 12, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: June 26, 2002, as supplemented on March 12, 2003.

Brief description of amendment: The amendment revises Technical Specification 5.6.5.b, ''Core Operating Limits Report (COLR),'' to incorporate the reference to Westinghouse Topical Report WCAP–12945–P–A, ''Code Qualification Document for Best Estimate Loss-of-Coolant Analysis,'' dated March 1998. The amendment allows the use of the analytical methodology to determine the core operating limits.

Date of issuance: May 6, 2003.

Effective date: May 6, 2003.

Amendment No.: 217.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: August 6, 2002 (68 FR 50952). The March 12 letter provided clarifying information that did not expand the scope of the ***Federal Register*** notice or change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is

contained in a Safety Evaluation dated May 6, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: July 5, 2002, as supplemented on September 27, November 6, November 21, and December 30, 2002; February 4, February 10, March 17, and April 14, 2003.

Brief description of amendment: The amendment increases the licensed power level by 1.5%, from 1998 MWt to 2028 MWt, based on the installation of ultrasonic flow measurement instrumentation resulting in improved feedwater flow measurement accuracy. The amendment changes the Operating License (OL) and Technical Specifications (TSs) to reflect the increase in licensed power level.

Date of issuance: May 9, 2003.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 201.

Facility Operating License No. DPR–35: Amendment revised the TSs and OL.

Date of initial notice in ***Federal Register***: September 3, 2002 (67 FR 56322). The supplements dated September 27, November 6, November 21, and December 30, 2002; February 4, February 10, March 17, and April 14, 2003, provided additional information that clarified the application, and did not expand the scope of the application or change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: February 27, 2003, as supplemented April 7, 2003.

Brief description of amendments: The amendments revise the Technical Specifications by adding a surveillance requirement to perform a quarterly trip unit calibration of the reactor protection system scram discharge volume water level—high differential pressure switches.

Date of issuance: May 6, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 214/208.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: April 1, 2003 (68 FR 15760). The supplement dated April 7, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 6, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of application for amendments: January 16, 2002, as supplemented October 17, 2002.

Brief description of amendments: These amendments revised portions of the current Technical Specifications, Section 6.0, ''Administrative Controls,'' to conform with improved Technical Specifications. The conversion is based upon: NUREG–1431, ''Standard Technical Specifications for Westinghouse Plants,'' Revision 2, dated April 2001; ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors'' (Final Policy Statement), published on July 22, 1993 (58 FR 39132); and Title 10 of the Code of Federal Regulations (10 CFR), § 50.36, ''Technical Specifications,'' as amended July 19, 1995.

Date of issuance: May 15, 2003.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 255 and 136.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: October 29, 2002 (67 FR 66010). The supplement dated October 17, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission (NRC) staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Beaver County, Pennsylvania

Date of application for amendment: May 31, 2002, as supplemented September 11, 2002, January 30, and February 21, 2003.

Brief description of amendment: The amendment revised the Technical Specification Design Feature 5.3.1, Criticality, such that the new fuel (fresh fuel) racks enrichment limit specified in Section 5.3.1.2.a was increased from 4.85 weight percent to a 5.00 weight percent limit.

Date of issuance: May 15, 2003.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment No: 135.

Facility Operating License No. NPF–73. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 17, 2002 (67 FR 58645). The September 11, 2002, January 30, and February 21, 2003, letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2003.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 22, 2002, as supplemented May 13, June 24, July 29, and December 20, 2002.

Description of amendment request: The amendment revises Technical Specifications (TSs) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''... up to 24 hours'' to ''...up to 24 hours or up to the limit of the specified surveillance interval, whichever is greater.'' In addition, the following requirement is added to SR 4.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.'' The amendment also adds a requirement for a TS Bases Control Program to the administrative controls section of TSs and makes administrative changes to SRs 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision

2, ''Standard Technical Specifications Westinghouse Plants.''

Date of issuance: May 15, 2003.

Effective date: As of its date of issuance, and shall be implemented within 30 days.

Amendment No.: 87.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2804).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2003.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan

Date of application for amendment: November 15, 2002, as supplemented February 24 and April 25, 2003.

Brief description of amendment: The amendment increases the licensed reactor core power level by 1.66 percent from 3411 megawatts thermal (MWt) to 3468 MWt. The power level increase is considered a measurement uncertainty recapture power uprate.

Date of issuance: May 2, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 259.

Facility Operating License No. DPR–74: Amendment revises the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2805)

The February 24 and April 25, 2003, supplemental letters provided additional clarifying information that was within the scope of the original application and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 2003.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 27, 2003.

Brief description of amendment: The amendment makes administrative and editorial changes to the Fort Calhoun Station Technical Specifications 1.3 Basis (1); 2.7 (1)a; 2.7 (1)b; 2.7 (1)d; 2.7 (1)i; 2.7 Basis; 3.0.2; Table 3–5, Item 11; and 3.5(3)ii. The changes are primarily editorial and are typographical changes or corrections.

Date of issuance: May 8, 2003.

Effective date: May 8, 2003, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 218.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 18, 2003 (68 FR 12955).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 8, 2003.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket No. 50–206, San Onofre Nuclear Generating Station, Unit 1, San Diego County, California

Date of application for amendment: March 11, 2003.

Brief description of amendments: The amendment application requests a revision to the Unit 1 defueled Technical Specifications administrative controls section to propose changes in organizational responsibilities. Specifically, the proposed changes identify that the Vice President, Engineering & Technical Services will be responsible for decommissioning activities. Additionally, the Station Manager will be designated as having approval authority for activities within the Station Manager's organization.

Date of issuance: May 15, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: Unit 1–161.

Facility Operating License No. DPR–13: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18285).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: February 19, 2003.

Description of amendment request: The amendments deleted Technical Specification 5.5.3, ''Post Accident Sampling'' and, thereby, eliminated the requirements to have and maintain the post accident sampling system.

Date of issuance: May 9, 2003.

Effective date: Date of issuance, to be implemented within 60 days.

Amendment Nos.: 245, 282, 240.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 18, 2003 (68 FR 12957).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 2003.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: July 25, 2002, as supplemented by letters dated February 5 and February 11, 2003.

Brief description of amendments: The amendments change the Comanche Peak Steam Electric Station, Units 1 and 2, Facility Operating Licenses as follows: The license conditions related to Decommissioning Trusts, specified in Sections 2.C.(4)(a), 2.C.(4)(b), 2.C.(4)(d), 2.C(4)(e), and 2.C.(6), are deleted and Section 2.E, which requires reporting any violations of the requirements contained in Section 2.C of the licenses, is deleted. Additionally, Technical Specification Table 5.5–2, ''Steam Generator Tube Inspection,'' Table 5.5–3, ''Steam Generator Repaired Tube Inspection for Unit 1 Only,'' and TS 5.6.10c, ''Steam Generator Tube Inspection Report,'' are revised to delete the requirement to notify the NRC pursuant to § 50.72(b)(2), ''Immediate notification requirements for operating nuclear power reactors,'' of Title 10 of the Code of Federal Regulations (10 CFR) if the steam generator tube inspection results are in a Category C–3 classification.

Date of issuance: May 15, 2003.

Effective date: December 24, 2003, and shall be implemented within 60 days from that date.

Amendment Nos.: 103/103.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56329).

The February 5, 2003, supplement was the subject of a second no significant hazards consideration determination (68 FR 10282, published March 4, 2003). The February 11, 2003, supplement provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 2003.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

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 for the amendment 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective 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 application for amendment, (2) the amendment to Facility Operating License, 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, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By June 26, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* 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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent 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 the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: April 25, 2003.

Brief description of amendments: The amendments modify Technical Specification surveillance requirements to provide an alternative means of testing the Unit 2 main steam power operated relief valves, including those that provide the automatic depressurization system and low set relief functions.

Date of issuance: May 8, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 215/209.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. Quad-City Times, dated May 5, 2003. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated May 8, 2003.

Dated at Rockville, Maryland, this 19th day of May 2003.

For the Nuclear Regulatory Commission.

William H. Ruland,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–12973 Filed 5–23–03; 8:45 am]

BILLING CODE 7590–01–U

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Atlantic Premium Brands, Ltd., Common Stock, $.01 par value) File No. 1–13747

May 19, 2003.

Atlantic Premium Brands, Ltd., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer approved a resolution on May 14, 2003 to withdraw the Issuer's Security from listing on the Amex. The Board considered such action to be in the best interest of the Issuer and its stockholders. In addition, the Board states that it took into account alternatives explored by the Issuer, including, without limitation, that: (i) The significant costs associated with maintaining the Issuer's status as a reporting company are expected to increasingly reduce profitability; (ii) the limited volume of trading of the Issuer's Security has resulted in the shares not providing a practical source of capital or liquidity; and (iii) no analysts currently cover the Issuer and its Security. The Issuer states in its application that it is currently seeking to list its Security on the Pink Sheets.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

Act[3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before June 12, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–13096 Filed 5–23–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: 68 FR 27114, May 19, 2003.

Status: Closed meetings.

Place: 450 Fifth Street, NW., Washington, DC.

Date and Time of Previously Announced Meeting: Wednesday, May 21, 2003.

Change in the Meeting: Additional item.

The following item has been added to the closed meeting of Wednesday, May 21, 2003: Litigation matter.

Commissioner Atkins, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: May 20, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–13197 Filed 5–21–03; 4:25 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47888; File No. SR–MSRB–2003–02]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G–14, on Reports of Sales or Purchases

May 19, 2003.

On April 7, 2003, Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 (the ''Exchange Act'') and Rule 19b-4 thereunder,[1] a proposed rule change (File No. SR-MSRB–2003–02). The proposed rule change relates to Rule G–14, on reports of sales or purchases, to increase transparency in the municipal securities market. The proposed rule change does not change the wording of Rule G–14.

The proposed rule change was published for notice and comment in the **Federal Register** on April 15, 2003.[2] The Commission received two comment letters on the proposed rule change.[3] This order approves the proposed rule change.

I. Description of the Proposed Rule Change

The MSRB's T+1 Daily Report and the Comprehensive Report are made available for market professionals seeking information on market price levels and trading activity for individual securities. In preparation for the move to real-time price transparency in mid-2004, the MSRB believes that the trading threshold in the T+1 Daily Reports should be eliminated to further increase the price transparency that is available on T+1. The current transaction threshold for the T+1 Daily Report is two or more trades per day. Under the proposed rule change, all trades reported by dealers on trade date would be made visible on T+1.

The MSRB's proposed rule change is part of the MSRB's longstanding plan to introduce transparency in measured steps. The MSRB believes that these steps allow the market time to adjust to new situations presented by each new level of price transparency. The proposed rule change would increase the number of trades and issues appearing each day on the T+1 Daily Report. Furthermore, the MSRB believes that the proposal will increase price transparency for municipal securities by increasing the amount of price data available on the day after trade date.

II. Summary of Comments

The Commission received two comment letters relating to the proposed rule change that express concerns. The TBMA letter expressed concerns about ''the potential impact of real-time transparency on the market for less-frequently traded bonds.'' Although TBMA indicated that it does not oppose the move to next-day transparency, it suggests that ''it should only be undertaken in connection with a more deliberate study of potential liquidity effects from a move to real-time transparency, consistent with the approach taken by the NASD and endorsed by the Commission in the area of corporate bond transparency.''[4] It expressed concern about the possible negative effects on liquidity from price dissemination. TBMA believes that ''for inactively traded bonds, the publication of price information, particularly in block size, may provide information to other market participants that would affect the ability of a holder of the same bonds to sell them without incurring a loss.'' Thus, TBMA supports the MSRB's proposal to display a large trade indicator for trades of $1 million or more instead of revealing the actual par value traded in the T+1 Daily Report. TBMA has formed a ''Price Transparency Task Force'' to conduct an analysis of the liquidity issue.[5] TBMA believes that examining the impact of next-day price transparency could be useful for considering potential liquidity impacts in the move towards real-time dissemination and that further steps to increase transparency in both the municipal and corporate bond markets should be delayed until the conclusion of such a study.

The Olsen letter supports the MSRB's proposed elimination of the trading threshold in the T+1 Daily Report.[6] However, he strongly opposes the MSRB's proposal to use a large trade indicator instead of the specific amount of trades of $1 million or more. Olsen

[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4 thereunder.

[2] *See* Release No. 34–47650 (April 8, 2003) 68 FR 18313.

[3] May 7, 2003 letter from Kevin Olson, Municipalbonds.com to SEC Commissioners, Commission (''Olsen letter''); May 9, 2003 letter from John M. Ramsay, Senior Vice President and Regulatory Counsel, The Bond Market Association to Jonathan G. Katz, Secretary, Commission (''TBMA letter'').

[4] *See* TBMA letter at 1.

[5] *Id.* at 3.

[6] Providing next-day transparency has been one of Olsen's key market demands. Olsen's other demands include, ''(1) dealer identifiers be attached, and (2) if there are reporting errors [sic] they be corrected and explained in a dedicated and public error report.'' *See* Olsen letter at 1.

believes that the change is ''unacceptable'' and that smaller investors deserve ''full reporting and trade information.''[7]

III. Discussion and Commission Findings

Section 19(b) of the Exchange Act[8] requires the Commission to approve the proposed rule change filed by the MSRB if the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. The Commission has reviewed carefully the proposed rule change, and the comments received, and finds that the modification to the transaction threshold on the T+1 Daily Report, as described in the proposed rule change, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that govern the MSRB.[9] The language of section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[10]

The Commission supports the ongoing efforts of the MSRB to increase transparency in the municipal securities market and notes the careful and deliberate manner in which it has proceeded to do so over the last nine years.[11] This approach has provided an opportunity for the market to adjust incrementally. It has also permitted the Board, the Commission and market participants to observe whether any market disruption has been caused by the release of an increasing amount of trading data. No significant disruption has been observed. The Commission expects that market participants will adjust to the release of information regarding all daily trades in a similar manner.

The Commission believes that the proposal will provide the benefit of price transparency to the municipal securities market while addressing the TBMA's concerns regarding potentially negative effects from disclosure of the size of specific institutional trades. The release of such transaction data facilitates the flow of information for use by market professionals and pricing services.[12] In addition, increased transparency leads to greater market efficiency and increased accuracy in pricing municipal securities being traded in the secondary market. The Commission believes that the proposal is an appropriate prepatory step towards the 2004 implementation of real time disclosure in both the municipal and corporate bond markets.[13]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[14] that the proposed rule change (File No. SR-MSRB–2003–02) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–13097 Filed 5–23–03; 8:45 am]

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[7] *Id.*

[8] 15 U.S.C. 78s(b).

[9] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 1015 U.S.C. 78o–4(b)(2)(C).

[11] The MSRB began to collect information from reports of inter-dealer trades in 1994 and began issuing a summary report of such trades in January of 1995. In March of 1998, reporting of customer trades began, followed by the release of a summary report of combined inter-dealer and customer trades in August 1998. In January 2000, the Board began releasing a report on T+1 of all bonds that traded four or more times daily. In May 2002, the MSRB lowered the threshold from four to three trades on the T+1 Daily Report. In November 2002, the MSRB lowered the trade threshold to two trades per day. See Release No. 34–34955 (November 9, 1994), 59 FR 59810; Release No. 34–45861 (May 1, 2002), 67 FR 30989; Release No. 34–46819 (November 12, 2002), 67 FR 69779.

[12] The T+1 Daily Report has been well received by market professionals and investors seeking information on market price levels and trading activity for municipal securities and has garnered greater and greater use over time.

[13] The Commission believes that the MSRB's real time trade reporting initiative should be accorded the highest priority and implemented as soon as possible, but not later than the current mid-2004 deadline.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47881; File No. SR–NYSE–2003–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto and Order Granting Accelerated Approval of Amended Proposal by the New York Stock Exchange, Inc. To Conform the New York Stock Exchange Listed Company Manual to New York Stock Exchange Rules That Allow Authorized State-Registered Investment Advisers To Receive and Vote Proxy Materials on Behalf of Beneficial Owners

May 16, 2003.

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 April 25, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, III below, which items have been prepared by the Exchange. On May 7, 2003, the NYSE submitted Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission has also decided to accelerate approval of the proposed rule change, as described in more detail below.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend sections 402.06 (''Exchange Proxy Rules for Member Organizations (General)'') and 402.10 (''Charges by Member Organizations for Distributing Material'') of its Listed Company Manual to conform such sections to NYSE rules that allow authorized state-registered investment advisers to receive and vote proxy materials on behalf of beneficial owners. The text of the proposed amendment is below. Proposed new language is italicized; deleted language is in brackets.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240–19b–4.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 6, 2003 (''Amendment No. 1''). Amendment No. 1 replaces the original filing in its entirety. Telephone conversation between AnnMarie Tierney, Senior Counsel, Office of the General Counsel, NYSE, and Jennifer Lewis, Attorney, Division, Commission, on May 13, 2003.

Listed Company Manual

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402.00 Proxies

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402.06 Exchange Proxy Rules for Member Organizations (General)

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The term ''state'' as used in this section shall have the meaning given to such term in section 202(a)(19) of the Investment Advisers Act of 1940, and as such term may be amended from time to time therein.

(A) Rule 450—Restriction on Giving of Proxies

No member organization shall give or authorize the giving of a proxy to vote stock registered in its name, or in the name of its nominee, except as required or permitted under the provisions of rule 452 (Para. 2452), unless such member organization is the beneficial owner of such stock. Notwithstanding the foregoing,

(1) Any member organization, designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary, may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities; and

(2) Any person registered as an investment adviser, *either* under the Investment Advisers Act of 1940 *or under the laws of a state,* who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to vote the proxies for stock which is in the possession or control of the member organization, may vote such proxies.

(A) Rule 451—Transmission of Proxy Material

(a) Whenever a person soliciting proxies shall furnish a member organization:

(1) Copies of all soliciting material which such person is sending to registered holders, and

(2) Satisfactory assurance that [he] *the person* will reimburse such member organization for all out-of-pocket expenses, including reasonable clerical expenses, incurred by such member organization in connection with such solicitation,

such member organization shall transmit to each beneficial owner of stock which is in its possession or control or to an investment adviser, registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state,* who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter ''designated investment adviser'') to receive soliciting material in lieu of the beneficial owner, the material furnished; and

* * * * *

(D) Rule 452—Giving Proxies by Member Organization

A member organization shall give or authorize the giving of a proxy for stock registered in its name, or in the name of its nominee, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

Voting member organization holding as executor, etc.

A member organization may give or authorize the giving of a proxy to vote any stock registered in its name, or in the name of its nominee, if such member organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative of fiduciary capacity with authority to vote.

Voting procedure without instructions

A member organization which has transmitted proxy soliciting material to the beneficial owner of stock or to an investment adviser, registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state,* who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter ''designated investment adviser'') to receive soliciting material in lieu of the beneficial owner and solicited voting instructions in accordance with the provisions of Rule 451, and which has not received instructions from the beneficial owner or from the beneficial owner's designated investment adviser by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to vote such stock, provided the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

* * * * *

402.10 Charges by Member Organizations for Distributing Material

The Exchange is engaged in a pilot program covering proxy fees. The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to rule 451 and in mailing interim reports or other material pursuant to rule 465. In addition to the charges specified in this schedule, member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting the proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically. Rule 465 states: that, ''*A* member organization, when so requested by a company, and upon being furnished with:

(1) copies of interim reports of earnings or other material being sent to stockholders, and

(2) satisfactory assurance that it will be reimbursed by such company for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit such reports or material to each beneficial owner of stock of such company held by such member organization and registered in a name other than the name of the beneficial owner unless the beneficial owner has instructed the member organization in writing to transmit such reports or material to a designated investment adviser, registered *either* under the Investment Advisers Act of 1940 *or under the laws of a state,* who exercises investment discretion pursuant to an advisory contract for such beneficial owner.''

The term ''state'' as used in this section shall have the meaning given to such term in section 202(a)(19) of the Investment Advisers Act of 1940, and as such term may be amended from time to time therein.

* * * * *

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 NYSE 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 III below. The NYSE 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 October 16, 2002, the NYSE filed with the Commission amendments to NYSE rule 450 (''Restrictions on Giving of Proxies''), rule 451 (''Transmission of Proxy Material''), rule 452 (''Giving Proxies by Member Organizations'') and rule 465 (''Transmission of Interim Reports and Other Material'') to allow authorized state-registered investment advisers to receive and vote proxy materials on behalf of beneficial owners.[4] These amendments were approved by the Commission on March 6, 2003.[5] In light of the fact that Listed Company Manual sections 402.06 and 402.10 restate portions of NYSE rules 450, 451, 452 and 465, the Exchange is proposing to amend the Listed Company Manual to conform to the NYSE rule amendments approved by the Commission. In addition, the NYSE has proposed minor amendments to conform the restatement of NYSE rule 452 in section 402.06 to the text of current NYSE rule 452.

2. Statutory Basis

The Exchange believes the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market 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 will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal 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 NYSE. All submissions should refer to File No. SR-NYSE–2003–12 and should be submitted by June 17, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the amended proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5) of the Act.[7] The Commission believes the NYSE Listed Company Manual should conform to the NYSE rules; differences between the two could lead to confusion and misunderstanding. The Commission also believes that the changes to the NYSE Listed Company Manual are consistent with the Act for the reasons discussed in the prior Approval Order.[8] Therefore, the Commission finds that the amended proposal will promote just and equitable principles of trade, and, and in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[9]

The NYSE has requested that the amended proposal be given accelerated approval pursuant to section 19(b)(2) of the Act.[10] The Commission finds that good cause exists to grant accelerated approval to the proposal. The Commission notes that the proposed rule change is identical to amendments to the NYSE rules that were previously approved by the Commission after publication of notice thereof in the **Federal Register**.[11] Further, the Commission received one comment letter supporting the proposal in response to the publication.[12] Based on this, and the fact that the contents of the current proposal were subject to full notice and comment in the prior publication, the Commission finds there is good cause to accelerate approval of the proposal. Accordingly, the Commission finds good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act,[13] to approve the amended proposal prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the amended proposal (SR–NYSE–2003–12) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–13134 Filed 5–23–03; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Securities Exchange Act Release No. 47215 (January 17, 2003), 68 FR 4263 (January 28, 2003) (SR–NYSE 2002–50).

[5] *See* Securities Exchange Act Release No. 47458 (March 6, 2003), 68 FR 12131 (March 13, 2003) (SR–NYSE–2002–50) (''Approval Order'').

[6] 15 U.S.C. 78(f)(b)(5).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* the Approval Order, *supra* note 5, discussing changes made to the NYSE rules. The Commission hereby incorporates by reference the discussion contained therein.

[9] 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] *See supra* notes 4 and 5.

[12] *See* letter from Christine A. Bruenn, NASSA President and Maine Securities Administrator, North American Securities Administrators Association, Inc., to Jonathan G. Katz, Secretary, Commission, dated February 18, 2003.

[13] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b)(2).

[14] *Id.*

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47872; File No. SR–PCX–2003–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Arbitration

May 15, 2003.

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 May 13, 2003, the Pacific Exchange, Inc. (''PCX'' 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 PCX. PCX filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange and its wholly owned subsidiary PCX Equities, Inc. (''PCXE'') are proposing to extend the pilot rule in PCX rule 12.1, Commentary .02 and PCXE rule 12.2(h), which requires industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers (and, in industry cases, upon the request of associated persons with claims of statutory employment discrimination), for a six-month pilot period.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PCX 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 21, 2002, the Commission approved, for a six-month pilot period, the Exchange's proposal to amend PCX and PCXE arbitration rules to require industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers or, in employment discrimination cases, upon the request of associated persons.[5] The pilot program is currently set to expire on May 22, 2003.

On July 1, 2002, the Judicial Council of the State of California adopted new rules that mandated extensive disclosure requirements for arbitrators in California (the ''California Standards''). The California Standards are intended to address perceived conflicts of interest in certain commercial arbitration proceedings. As a result of the imposition of the California Standards on arbitrations conducted under the auspices of self-regulatory organizations (''SROs''), the National Association of Securities Dealers, Inc. (''NASD'') and the New York Stock Exchange (''NYSE'') suspended the appointment of arbitrators for cases pending in California, and filed a joint complaint in federal court for declaratory relief in which they contend that the California Standards cannot lawfully be applied to NASD and NYSE because the California Standards are preempted by federal law and are inapplicable to SROs under state law.[6] Subsequently, in the interest of continuing to provide investors with an arbitral forum in California pending the resolution of the applicability of the California Standards, NASD and NYSE filed separate rule proposals with the Commission that would temporarily require their members to waive the California Standards if all non-member parties to arbitration have done so. The Commission approved the NASD's rule proposal on September 26, 2002,[7] and the NYSE's rule proposal on November 12, 2003.[8] On November 7, 2002, PCX filed its proposed rule change with the SEC, which is substantially similar to the NASD's and NYSE's rule changes. The SEC approved this rule change on November 21, 2002, for a six-month pilot period through May 22, 2003.[9]

Since the NASD's and NYSE's lawsuit relating to the application of the California Standards has not been resolved, PCX is now requesting an extension of the pilot for an additional six months (or until the pending litigation has resolved the question of whether or not the California Standards apply to SROs).[10] PCX requests that the pilot be extended for six months beginning on May 23, 2003. The extension of time permits the Exchange to continue the arbitration process using PCX rules regarding arbitration disclosures and not the California Standards. No substantive changes are being made to the pilot program, other than extending the operation of pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6(b)(5) of the Act,[11] in that it is designed to promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

Written comments on the proposed rule change were neither solicited nor received.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Act Release No. 46881 (November 21, 2002), 67 FR 71224 (November 29, 2002) (Order approving SR–PCX–2002–71).

[6] *See* Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.,* v. *Judicial Council of California,* filed in the United States District Court for the Northern District of California, No. C 02 3486 SBA (July 22, 2002), available on the NASD Web site at: *www.nasdadr.com/pdf-text/072202_ca_complaint.pdf.*

[7] *See* Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002) (Order approving SR–NASD–2002–126).

[8] *See* Exchange Act Release No. 46816 (November 12, 2002), 67 FR 69793 (November 19, 2002) (Order approving SR–NYSE–2002–56).

[9] *See* Note 3, *supra.*

[10] *See also Richard Mayo* v. *Dean Witter Reynolds, Inc. et al.,* C–01–20336 JF (N.D. Cal.) in which the District Court for the Northern District of California held that the California Standards, at least as applied to SROs, are preempted by federal law. As this decision was rendered on April 22, 2003, it is still subject to appeal.

[11] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX provided the Commission with written notice of its intention to file the proposed rule change at least five business days before its filing. Moreover, the PCX has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [12] and rule 19b–4(f)(6) thereunder.[13] 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 the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to rule 19b–4(f)(6)(iii) under the Act,[14] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative date so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the 30-day operative date is consistent with the protection of investors and the public interest.[15] Accelerating the operative date will merely extend a pilot program that is designed to provide investors with a mechanism to resolve disputes with broker-dealers. During the period of this extension, the Commission and PCX will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates that the proposed rule change as effective and operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. PCX–2003–22 and should be submitted by June 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–13135 Filed 5–23–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3505]

State of Illinois

As a result of the President's major disaster declaration on May 15, 2003, I find that Adams, Alexander, Brown, Fulton, Hancock, Mason, Massac, Pope, Pulaski, Schuyler, Tazewell and Woodford Counties in the State of Illinois constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on May 6 through May 11, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 14, 2003 and for economic injury until the close of business on February 17, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Cass, Hardin, Henderson, Johnson, Knox, LaSalle, Livingston, Logan, Marshall, McDonough, McLean, Menard, Morgan, Peoria, Pike, Saline, Union, Warren and Williamson in the State of Illinois; Lee County in the State of Iowa; Ballard, Livingston, Marshal and McCracken Counties in the State of Kentucky; Cape Girardeau, Clark, Lewis, Marion, Mississippi and Scott Counties in the State of Missouri.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 350512. For economic injury the number is 9V4000 for Illinois; 9V4100 for Iowa; 9V4200 for Kentucky; and 9V4300 for Missouri.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 19, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13109 Filed 5–23–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P009]

State of Maine

As a result of the President's major disaster declaration for Public Assistance on May 14, 2003 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Androscoggin, Aroostook, Cumberland, Franklin, Hancock, Lincoln, Oxford, Penobscot, Piscataquis and Washington Counties in the State of Maine constitute a disaster area due to damages caused by severe winter cold and frost occurring on December 17, 2002 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close

of business on July 14, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

For Physical Damage:

Non-Profit Organizations Without Credit Available Elsewhere: 3.324%.

Non-Profit Organizations With Credit Available Elsewhere: 5.500%.

The number assigned to this disaster for physical damage is P00911.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: May 16, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13108 Filed 5–23–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3497]

State of Missouri

(Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 16, 2003, the above numbered declaration is hereby amended to include Audrain, Boone, Callaway, Chariton, Clark, Cole, Howard, Knox, Lewis, Lincoln, Marion, Moniteau, Montgomery, Osage, Pike, Ralls, Randolph and Shelby Counties in the State of Missouri as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Adair, Linn, Livingston, Macon, Monroe and Scotland in the State of Missouri; Adams, Calhoun, Hancock and Pike Counties in the State of Illinois; and Lee and Van Buren Counties in the State of Iowa may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

The economic injury number assigned to Iowa is 9V4400.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 19, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13107 Filed 5–23–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3498]

State of Tennessee

(Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 15, 2003, the above numbered declaration is hereby amended to include Bedford, Bledsoe, Bradley, Cannon, Coffee, Davidson, DeKalb, Hamilton, Lincoln, Marion, Marshall, Maury, McMinn, Meigs, Monroe, Polk, Rhea, Rutherford, Sequatchie, Warren, Wayne, Williamson and Wilson Counties in the State of Tennessee as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Blount, Cumberland, Franklin, Giles, Grundy, Lawrence, Lewis, Loudon, Moore, Perry, Putnam, Roane, Smith, Trousdale, Van Buren and White in the State of Tennessee; Jackson, Lauderdale, Limestone and Madison Counties in the State of Alabama; Catoosa, Dade, Fannin, Murray, Walker and Whitfield Counties in the State of Georgia; and Cherokee, Graham and Swain Counties in the State of North Carolina may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

The economic injury number assigned to Alabama is 9V3700; Georgia is 9V3800; and North Carolina is 9V3900.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 15, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–13106 Filed 5–23–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Delegation of Authority 175–3; Further Assignment of Functions Under Section 208 of Title 18 of the United States Code

AGENCY: Department of State.

ACTION: Further assignment of functions.

SUMMARY: Delegations of Authority No. 175 and 245 delegated authority from the Secretary of State to the Deputy Secretary of State to issue waivers pursuant to 18 U.S.C. 208(b)(1) to Department of State employees. In 1992 and 1995, the Deputy Secretary of State redelegated authority to the Legal Adviser to issue certain waivers. This notice informs the public of the Deputy Secretary's further delegation of authority to the Legal Adviser to issue certain waivers.

DATES: These actions are effective immediately.

Section 1. Functions Delegated

By virtue of the authority vested in me by the Secretary of State in Delegation of Authority No. 175, dated April 7, 1989, and Delegation of Authority 245, dated April 23, 2001, I hereby delegate to the Legal Adviser the authority vested in me to issue waivers pursuant to 18 U.S.C. 208(b)(1) to Department of State employees (other than Seventh Floor principals) in any of the following circumstances:

(a) Where the affected financial interest of the employee is worth $250,000 or less;

(b) Where the waiver is applicable for a specific activity;

(c) Where the employee is seeking employment by an international organization; or

(d) Where the waiver does not exceed six (6) months in duration.

Section 2. Delegations Revoked

(a) Delegation of Authority dated September 30, 1992, from the Deputy Secretary of State to the Legal Adviser delegating authority to issue waivers pursuant to 18 U.S.C. 208(b)(1) to Department of State employees (other than Seventh Floor principals) where the affected financial interest of the employee is worth less than $50,000 or where the waiver is applicable for a specific activity.

(b) Delegation of Authority dated March 10, 1995, from the Acting Secretary of State to the Legal Adviser delegating authority to issue waivers pursuant to 18 U.S.C. 208(b)(1) to Department of State employees, provided such waivers shall not exceed 90 days in duration.

Section 3. General Provisions

Notwithstanding any provision of this delegation of authority, the Secretary and the Deputy Secretary of State may at any time exercise the functions herein delegated. This delegation of authority shall be published in the **Federal Register**.

Dated: May 14, 2003.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 03–13150 Filed 5–23–03; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 181/ EUROCAE Working Group 13: Standards of Navigation Performance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 181/EUROCAE Working Group 13 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 181/ EUROCAE Working Group 13: Standards of Navigation Performance.

DATES: The meeting will be held June 3–6, 2003 starting at 9 a.m.

ADDRESSES: The meeting will be held at the RTCA Inc., Suite 805, 1828 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 181/EUROCAE Working Group 13 meeting. *Note: Working Groups 1 & 4 will meet separately June 3–5.* The Plenary agenda will include:

- June 6:
- Opening Plenary Session (Chairman Remarks, Review/Approval of Previous Meeting Minutes)
- Review Working Group (WG) Progress and Identify Issues for Resolution
- WG–1 Report
- WG–4 Report
- Review/Approval—Proposed Final Draft DO–236B
- Review/Approval—Proposed Final Draft DO–283A
- Status DO–257A
- Assignment/Review of Future Work
- Closing Plenary Session (New Business, Review of Action Items, Future Meeting Schedule, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 20, 2003.

Jane Caldwell,

Program Director, System Engineering Resource Management.

[FR Doc. 03–13154 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Nick Wilson Field, Pocahontas, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at Nick Wilson Field under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before June 26, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Edward Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/ Oklahoma Airports Development Office, ASW–630, Forth Worth, Texas 76193–0630.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mayor Gary Crocker, City of Pocahontas, at the following address: City of Pocahontas, 410 North Marr Street, Pocahontas, AR 72455.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Burns, Program Manager, Federal Aviation Administration, AR/OK ADO, ASW–630, 2601 Meacham Boulevard, Forth Worth, Texas 76193–0630.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at Nick Wilson Field under the provisions of the AIR 21.

On May 16, 2003, the FAA determined that the request to release property at Nick Wilson Field submitted by the City met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than July 16, 2003.

The following is a brief overview of the request:

The City of Pocahontas requests the release of 13.949 acres of non-aeronautical airport property. The land is part of a War Assets Administration deed of airport property to the City in 1947. The release of property will allow funding for maintenance, operation, and development of the airport.

The sale is estimated to provide $70,000 to be used to:

1. Construct a Fuel Delivery system.
2. Construct A Pilot's Lounge.
3. Refurbish a Maintenance Hangar.
4. Conduct a Master Plan Study.

All remaining proceeds for the sale will be deposited in an interest-bearing account and will be expended within 3 years on airport maintenance, operation, and development.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Nick Wilson Field.

Issued in Fort Worth, Texas on May 16, 2003.

Naomi L. Saunders,

Manager, Airports Divisions.

[FR Doc. 03–13155 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15226]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *ACHILLES*.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15226 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 26, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15226. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *ACHILLES* is:

Intended Use: ''Charters * * * I will be traveling throughout the United States and as I go I will be picking up passengers who will be a part of the journey from Rhode Island to Alaska. Mostly Coastal cruising. Initially I will be in the coastal waters of Rhode Island.''

Geographic Region: ''New England and then the Coastal waters of RI to Alaska.''

Dated: May 20, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13100 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15223]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel KARITAN.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15223 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 26, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15223. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KARITAN is:

Intended Use: ''Evening cruise on York River''.

Geographic Region: ''York River and Chesapeake Bay of Virginia''.

Dated: May 20, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13103 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15225]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *SBOUTIME.*

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15225 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in

accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 26, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15225. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel *SBOUTIME* is:

Intended Use: ''Full and half day captained sailing charters.''

Geographic Region: ''New England and Florida.''

Dated: May 20, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration

[FR Doc. 03–13101 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15224]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *SEFERINA.*

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15224 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 26, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15224. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *SEFERINA* is:

Intended Use: ''Sailing and kayak mothership tours.''

Geographic Region: ''Prince William Sound and Gulf of Alaska out of the Port of Valdez.''

Dated: May 20, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13102 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15227]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *SLIP KNOT.*

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15227 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver

criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 26, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15227. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *SLIP KNOT* is:

Intended Use: ''Sightseeing Tours''.

Geographic Region: ''Inland and coastal waters—Florida''.

Dated: May 20, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13099 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15233]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SOWELU.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15233 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 26, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15233. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SOWELU is:

Intended Use: ''Private, personalized Charters by day or week in vicinity of E.Boothbay, Maine. Cruises Cape Cod to Canadian Border.''

Geographic Region: ''Maine to Key West.''

Dated: May 20, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13105 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15222]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel STEADFAST.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15222 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 26, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15222. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket

is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel STEADFAST is:

Intended Use: ''Our intention for commercial use of the ''STEADFAST'' is to offer half day and full day custom cruises of Prince William Sound. Our cruises will be for the passenger who does not want to be tied to a set schedule and who wants a specialized cruise, away from the crowds. Eventually we may extend our operation to overnight custom charters.''

Geographic Region: ''Prince William Sound of Alaska''.

Dated: May 20, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–13104 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10856]

Motor Vehicle Safety: Disposition of Recalled Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on the proposed collection of information.

This document describes a proposed collection of information under regulations implementing a provision of the Transportation Recall Effectiveness, Accountability, and Documentation (TREAD) Act with respect to the disposition of recalled tires, for which NHTSA intends to seek OMB approval. Pursuant to the TREAD Act, NHTSA is conducting rulemaking to amend existing regulations (49 CFR part 573) that require manufacturers of motor vehicles, equipment, and tires to notify NHTSA whenever they decide that their products contain safety-related defects or noncompliances with Federal motor vehicle safety standards and to provide quarterly reports of the progress of recalls. The proposed amendment provides that a manufacturer's remedy program for the replacement of defective or noncompliant tires shall include a plan addressing how to prevent, to the extent reasonably within the manufacturer's control, the replaced tires from being resold for installation on a motor vehicle, and also how to limit, to the extent reasonably within the manufacturer's control, the disposal of replaced tires in landfills. In addition, this rule would also require the manufacturer to include certain information about the implementation of these plans in its quarterly report to NHTSA about the progress of the recall.

DATES: Comments must be received on or before July 28, 2003.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. The Docket is open on weekdays from 9:30 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. George Person, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Room 5326, Washington, DC 20590. Mr. Person's telephone number is (202) 366–5210.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA), before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

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

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Motor Vehicle Safety; Disposition of Recalled Tires

Type of Request—New Collection.

OMB Clearance Number—None.

Requested Expiration Date of Approval—Three years from effective date of final rule.

Summary of Collection of Information—Section 7 of the TREAD Act requires a manufacturer's remedy program for tires to include a plan for preventing, to the extent reasonably within the manufacturer's control, the resale of replaced tires for use on motor vehicles, as well as a plan for the disposition of replaced tires other than in landfills, particularly through methods such as shredding, crumbling, recycling, recovery, or other ''beneficial non-vehicular uses.'' Manufacturers that conduct recalls are already required by 49 CFR part 573 to submit a Defect or Noncompliance Information Report, containing certain information, to NHTSA. One item of required information is a description of the manufacturer's program for remedying the defect or noncompliance.

NHTSA has issued a Notice of Proposed Rulemaking (66 FR 65165) and a Supplemental Notice of Proposed Rulemaking (67 FR 48852) to implement section 7. The proposed rule would require manufacturers to address, among other things, how they will assure that the entities replacing the recalled tires are aware of the legal requirements related to recalls of tires, how they will reasonably prevent the resale of recalled tires, and how the disposal of recalled tires in landfills will be reasonably limited.

Further, section 7 requires the manufacturer to include information about the implementation of its plan in quarterly reports that it is required to make to NHTSA about the progress of its notification and remedy campaigns involving tires. Manufacturers are already required to file quarterly reports containing certain information about the progress of recalls. This rule would add a requirement to provide the number of recalled tires which have not been rendered unsuitable for resale or which might have been disposed of improperly and a description and identification of the tire outlet(s) involved in failures to act in accordance with the disposal plan. In view of the fact that the rule

provides only for ''exceptions reporting,'' we anticipate that very few quarterly reports will include and information under this amendment.

Description of the Need for the Information and Proposed Use of the Information—NHTSA will rely on the information provided by manufacturers under this rule in deciding whether or not the manufacturer(s) are complying with the requirements of the TREAD Act for the proper handling and disposal of recalled tires.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information)—All manufacturers that conduct tire recall campaigns would be required to comply with reporting requirements. We estimate that there are 10 manufacturers of tires. In the past 3 years, there has been an average of between 9 and 10 tire recalls conducted annually by all manufacturers. (Occasionally, but rarely, vehicle manufacturers conduct recalls that involve the replacement of tires.) Manufacturers are required to provide quarterly reports for 6 quarters for each. If a manufacturer does not combine quarterly reporting for all active (within 6 quarters) recalls, there could be a total of up to 40 quarterly reports per year (4 x 10), but most would not contain any information under this amendment.

Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information in the NPRM—Manufacturers conducting tire recalls would be required to include additional information in their part 573 notices when initiating a recall. This will require about one hour of staff work in each notice. Additionally, each quarterly report that includes information under this amendment could require up to an additional 8 hours to maintain the records and prepare the report.

Estimate of the Total Annual Costs of the Collection of Information in the NPRM—Other than the cost of the burden hours, we estimate that there would be no additional costs associated with this information collection.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–13122 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–15209]

Public Meetings on Reporting Procedures Under the Early Warning Reporting Rule

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This document announces that NHTSA will hold meetings with interested members of the public to discuss the manner in which early warning reporting (EWR) information is to be submitted by motor vehicle and motor vehicle equipment manufacturers to NHTSA's Office of Defects Investigation (ODI) pursuant to regulations adopted to implement the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.

DATES: NHTSA will conduct public meetings on June 18 and 19, 2003, with regard to specific motor vehicles and motor vehicle equipment, at the following times:

Tires: June 18, 2003 from 9:30 a.m. to 12 p.m.

Child restraint systems and other equipment: June 18, 2003 from 1 p.m. to 3:30 p.m.

Light vehicles: June 19, 2003 from 9:30 a.m. to 12 p.m.

Medium-heavy vehicles and buses: June 19, 2003 from 1 p.m. to 3:30 p.m.

Location: All meetings will be held in Room 8236 of the United States Department of Transportation (Nassif) Building, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Lorena Villa, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5319, Washington, DC 20590; (202) 366–0699 or at *bvilla@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: NHTSA will hold public meetings with interested members of the public to discuss the manner in which early warning reporting (EWR) information is to be submitted by motor vehicle and motor vehicle equipment manufacturers to NHTSA's Office of Defects Investigation (ODI) pursuant to subpart C of 49 CFR part 579. NHTSA will hold four separate public meetings to discuss submission by manufacturers of the following four types of products: tires, child restraint systems and other equipment, light vehicles, and medium/heavy vehicles and buses. At these meetings, NHTSA will discuss the procedures for the submission of EWR information, security measures for protection of EWR information, the manner in which NHTSA will acknowledge receipt of EWR information and identify problems with the submissions, and other technical matters. NHTSA will also answer questions raised on these issues at the meetings.

NHTSA recommends that all visitors arrive at least 45 minutes early in order to pass through building security. Visitors to the building should enter through the Southwest lobby to sign in with security and to be escorted to the meeting room.

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring such auxiliary aids (sign language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped tests, brailed materials, or large print materials, and magnifying devices) should contact Julia Goldson at (202) 366–9944, by Wednesday, June 4, 2003.

Issued on: May 19, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–13069 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–15172]

Notice of Receipt of Petition for Decision That Nonconforming 2001–2003 Mercedes-Benz Type 463 Short Wheel Base Gelaendewagen Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001–2003 Type 463 short wheel base(SWB) Gelaendewagen multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001–2003 Type 463 SWB Gelaendewagen MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features

that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is June 26, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Under 49 U.S.C. 30141(a)(1)(B), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards may also be granted admission into the United States, even if there is no substantially similar motor vehicle of the same model year originally manufactured for importation into and sale in the United States, if the safety features of the vehicle comply with or are capable of being altered to comply with those standards based on destructive test information or other evidence that NHTSA decides is adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Baltimore, Maryland (''J.K.'')(Registered Importer 90–006) has petitioned NHTSA to decide whether 2001–2003 Type 463 SWB Gelaendewagen MPVs are eligible for importation into the United States. J.K. has identified its petition as pertaining to both the Cabriolet and the Three Door versions of these vehicles. J.K. believes that these vehicles can be made to conform to all applicable Federal motor vehicle safety standards (FMVSS).

In its petition, J.K. noted that over a period of ten years, NHTSA has granted import eligibility to a number of Mercedes Benz Gelaendewagen type 463 vehicles. These include the 1990–1996 SWB version of the vehicle (assigned vehicle eligibility number VCP–14) and the 1996 through 2001 long wheel base (LWB) version of the vehicle (assigned vehicle eligibility numbers VCP–11, 15, 16, 18, and 21). These eligibility decisions were based on petitions submitted by J.K. and another registered importer, Europa International, Inc., claiming that the vehicles were capable of being altered to comply with all applicable FMVSS. Because those vehicles were not manufactured for importation into and sale in the United States, and were not certified by their original manufacturer (Daimler Benz), as conforming to all applicable FMVSS, they cannot be categorized as ''substantially similar'' to the 2001–2003 SWB versions for purposes of establishing import eligibility under 49 U.S.C. 30141(a)(1)(A). In addition, while there are some similarities between the SWB and LWB versions, NHTSA has decided that the 2002 and 2003 LWB versions of the vehicle that Mercedes Benz has manufactured for importation into and sale in the United States cannot be categorized as substantially similar to the SWB versions for the purpose of establishing import eligibility under section 30141(a)(1)(A). Therefore, we will construe J.K.'s petition as a petition pursuant to 49 U.S.C. 30141(a)(1)(B).

J.K. submitted information with its petition intended to demonstrate that 2001–2003 Type 463 SWB Gelaendewagen MPVs, as originally manufactured, conform to many applicable FMVSS and are capable of being readily altered to conform to all other applicable standards to which they were not originally manufactured to conform.

Specifically, the petitioner claims that 2001–2003 Type 463 SWB Gelaendewagen MPVs has safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power-Operated Window Systems*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Replacement of the instrument cluster with the U.S.-model component; (b) replacement of the cruise control lever with a U.S.-model component on vehicles that are not so equipped; (c) reprogramming and initialization of the vehicle control system to integrate the new instrument cluster and activate required warning systems.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies or modification of existing taillamps to conform to the standard; (c) installation of U.S.-model sidemarker lights.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the mirror's surface.

Standard No. 114 *Theft Protection:* programming of the vehicle control systems to activate the required driver warning.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* Programming of the vehicle control systems to activate the required seat belt warnings. The petitioner states

that the vehicles are equipped with driver's and passenger's air bags and knee bolsters, and with combination lap and shoulder belts that are self-tensioning and that release by means of a single red push button at the front and rear outboard seating positions.

Standard No. 225 *Child Restraint Anchorage Systems:* Inspection of all vehicles for compliance with this standard, and modification of any vehicle found not to comply.

Standard No. 301 *Fuel System Integrity:* The petitioner states that the vehicles' fuel systems must be modified with U.S.-model parts to meet U.S. Environmental Protection Agency (EPA) OBDII, Spit Back, and enhanced EVAP requirements. The petitioner claims that as modified, these systems will control all fuel leaks in the case of an impact.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 20, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–13067 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14631; Notice 2]

Decision That Nonconforming 1986 Chevrolet Blazer Multi-Purpose Passenger Vehicle Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1986 Chevrolet Blazer multi-purpose passenger vehicles are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1986 Chevrolet Blazer multi-purpose passenger vehicle not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1986 Chevrolet Blazer multi-purpose passenger vehicle), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''WETL'') (Registered Importer 90–005) petitioned NHTSA to decide whether non-U.S. certified European Market 1986 Chevrolet Blazer multi-purpose passenger vehicles are eligible for importation into the United States. NHTSA published notice of the petition on March 12, 2003 (68 FR 11899) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice of the petition. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–405 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that European Market 1986 Chevrolet Blazer multi-purpose passenger vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1986 Chevrolet Blazer multi-purpose passenger vehicles originally manufactured for sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 15, 2003.

Kenneth N. Weinstein,

Associate Administrator For Enforcement.

[FR Doc. 03–13068 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–8827; Notice 4]

Dan Hill and Associates, Inc.; Red River Manufacturing; Decision on Applications for Renewal of Temporary Exemptions From Federal Motor Vehicle Safety Standard No. 224

This notice grants the application by Dan Hill and Associates, Inc. (''Dan Hill''), of Norman, Oklahoma, for a renewal of its temporary exemption from Federal Motor Vehicle Safety Standard No. 224, *Rear Impact Protection.* This notice also defers a decision on a similar renewal petition by Red River Manufacturing (''Red River'') of West Fargo, North Dakota. Dan Hill asserted that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. Red River argued that absent an exemption it would be otherwise unable to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle.

Notice of receipt of the applications was published on March 31, 2003 (68 FR 15550), and comments solicited from the public.

Dan Hill and Red River have been the beneficiaries of temporary exemptions from Standard No. 224, and renewals of exemptions, from January 26, 1998 to April 1, 2003 (for **Federal Register** notices granting the petitions by Dan Hill, see 63 FR 3784 and 64 FR 49047; by Red River, see 63 FR 15909 and 64 FR 49049; for the most recent grant applicable to both petitioners, see 66 FR 20028). The information below is based on material from the petitioners' original and renewal applications of 1998, 1999, 2001, and their most recent applications.

Dan Hill and Red River filed their petitions at least 60 days before the expiration of their existing exemption. Thus, pursuant to 49 CFR 555.8(e), their current exemptions will not expire until we have made a decision on the current requests.

The Petitioners' Reasons Why They Continue to Need an Exemption

Dan Hill. Dan Hill manufactures and sells horizontal discharge semi-trailers (Models ST–1000, CB–4000, and CB–5000, collectively referred to as ''Flow Boy'') that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is designed to connect with and latch onto various paving machines (''pavers''). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 kg or more, including Flow Boy trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear Impact Guards.* Dan Hill argued that installation of the rear impact guard will prevent the Flow Boy from connecting to the paver. Thus, Flow Boy trailers will no longer be functional. Paving contractors will be forced to use either competitors' horizontal discharge trailers that comply with Standard No. 224 or standard dump body trucks or trailers which, according to Dan Hill, have inherent limitations and safety risks. In spite of continued exemptions since the effective date of the standard, Dan Hill averred that it has been unable to engineer its trailers to conform.

Dan Hill and Red River jointly filed a petition in March 2001 for rulemaking with NHTSA to amend Standard No. 224 to exclude horizontal discharge trailers. The agency granted this petition on May/June 2003 and will issue a Notice of Proposed Rulemaking in the near future.

Red River. Red River has previously applied for exemptions on the basis that compliance would cause it substantial economic hardship. The company has now applied for an exemption on the basis that absent an exemption it would be otherwise unable to sell a vehicle whose overall level of safety is at least equal to that of a nonexempted motor vehicle. Red River believed ''petitioning on the basis of equal overall safety ([49 CFR] 555.6(d)) is more appropriate because Red River is now part of a larger family of companies and because the merits of Red River's requested renewal of its exemption under Sec. 555.6(d) are straightforward and clear.'' Red River referenced its continuing but unsuccessful efforts to develop a means to conform its horizontal discharge trailers to Standard No. 224, and its petition for ameliorative rulemaking, filed jointly with Dan Hill.

Dan Hill's Reasons Why It Believes That Compliance Would Cause It Substantial Economic Hardship and That It Has Tried in Good Faith to Comply With Standard No. 224

Dan Hill is a small volume manufacturer. Its total production in the 12-month period preceding its latest petition was 55 units, a substantial decline from the 151 units reported in the petition preceding the current one. In the absence of a further exemption, Dan Hill asserted that the majority of its ''work force in the Norman, Oklahoma plant would be laid off resulting in McClain County losing one of its largest single employers.'' If the exemption were not renewed, Dan Hill's gross sales in 2003 would decrease by approximately $5,526,522. Its cumulative net income after taxes for the fiscal years 2000, 2001, and 2002 was $271,058. It projects a net income of $46,267 for fiscal year 2003.

The **Federal Register** notices cited above contain Dan Hill's arguments of its previous good faith efforts to conform with Standard No. 224 and formed the basis of our previous grants of Dan Hill's petitions. Dan Hill originally asked for a year's exemption in order to explore the feasibility of a rear impact guard that would allow the Flow Boy trailer to connect to a conventional paver. It concentrated its efforts between 1998 and 1999 in investigating the feasibility of a retractable rear impact guard, which would enable Flow Boys to continue to connect to pavers. The company examined various alternatives: installation of a fixed rear impact guard, redesign of pavers, installation of a removable rear impact guard, installation of a retractable rear impact guard, and installation of a ''swing-up'' style tailgate with an attached bumper. Its efforts to conform, from September 1999 until December 2000, involved the design of a swing-in retractable rear impact guard. Its review of its design, by Tech, Inc., showed that this, too, was not feasible. Among other things, Tech, Inc., was concerned that ''the tailgate, hinges, and air cylinders will not meet the criteria of the Standard 224—plasticity requirement,'' and that ''the bumper is a potential safety hazard'' because if the gate were raised and ''a flagman or a trailer stager is in between the paver and the bumper while the gate and bumper is rising, the bumper could cause serious injury or death.'' A copy of Tech Inc.'s report has been filed in the docket as part of Dan Hill's 2001 petition. The report also indicated that the costs associated with this design may be cost prohibitive ''when trying to win business in a highly competitive, yet narrow marketplace.'' Having concluded that compliance of horizontal discharge trailers with Standard No. 224 was unattainable, Dan Hill filed the petition for permanent relief through rulemaking, mentioned above.

Red River's Reasons Why Compliance Would Preclude Sale of Its Horizontal Discharge Trailers and Why These Trailers Provide an Overall Level of Safety at Least Equal to That of Nonexempted Trailers

Under 49 U.S.C. 30113(b)(3)(B)(iv), as implemented by 49 CFR 555.6(d), we may grant a temporary exemption of up to two years on finding that compliance with Standard No. 224 ''would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.''

A requirement that its horizontal discharge trailers comply with Standard No. 224 would preclude their sale, according to Red River. The petitioner discusses a range of options using fixed and retractable guards, concluding that ''the design and manufacturing problems associated with the development of a retractable rear impact guard for construction horizontal discharge trailers are enormous—perhaps, even insurmountable.

Nonexempted trailers are equipped with rear underride guards. Red River's horizontal discharge trailers will not be equipped with these guards, but, in Red River's opinion, an equivalent level of safety exists because the geometry of these trailers is similar to that of ''wheels-back'' trailers that are specifically exempted from Standard No. 224. Further, if measurements were based ''on the traditional dry van approach, and a plane was passed through the rear door and rear frame of the Red River trailers, the plane would be less than six inches beyond the rear tire.''

In addition, according to Red River, the design affords protection against passenger compartment intrusion in rear-end collisions in that the maximum forward movement of a motor vehicle involved in a rear-end collision is 24 inches; it is not likely that any part of the trailer would strike the colliding vehicle's windshield.

Red River noted that the trailer beds of end dump trailers have to be raised in order for their cargo to be off-loaded by gravity, contrasted with the more controlled discharge of cargo by horizontal discharge trailers. Further, use of end dump trailers is problematic on uneven terrain or where overhead obstacles such as bridges and power lines are present.

For all these reasons, Red River submitted that its horizontal discharge trailers have an overall level of safety at least equal to that of end dump trailers that comply with Standard No. 224.

Arguments Presented by Dan Hill and Red River Why a Renewal of Their Temporary Exemptions Would Be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Dan Hill. Dan Hill previously argued that an exemption would be in the public interest and consistent with traffic safety objectives because, without an exemption, ''within a short time, production of the trailer will cease entirely. This would mean a significant loss to many people in the state, including shareholders, lenders, employees, families, and other stakeholders.'' The amount of time actually spent on the road is limited because of the need to move the asphalt to the job site before it hardens. Dan Hill also cited its efforts before 2001 to enhance the conspicuity of Flow Boy trailers by: (1) Adding ''High intensity flashing safety lights; (2) Doubling the legally required amount of conspicuity taping at the rear of the trailer; (3) [adding] Safety signage; (4) [adding] Red clearance lights that normally emit light in twilight or night-time conditions; and (5) Installation of a rear under-ride protection assembly 28'' above the ground and 60″ in width.'' We assume that these features continue to be offered on its trailers.

With respect to the current petition, Dan Hill concluded that ''the general public benefits from better and improved roads as a result of the horizontal discharge method of delivering and discharging hot mix asphalt and other road building materials.'' It also asserted that ''contractors benefit from the discharge system because they operate more efficiently, [and] experience greater safety records which results in lower costs.'' Such trailers ''present a safe alternative to the standard dump body truck or trailer'' because ''the location of the rear-most axle of the Flow Boy causes its rear tires to act as a buffer and limits the maximum forward movement of a motor vehicle involved in a rear-end collision with a horizontal discharge trailer * * *.''

Red River. Red River argued that, ''because of the functionality and safety of Red River's construction horizontal discharge trailers, the exemption requested here would be in the public interest.''

According to Red River, an exemption would be consistent with considerations of safety as well. The trailers spend a large portion of their operating time off the public roads. Further, ''typical hauls are short and have a minimal amount of highway time when compared with other semi-trailers.'' As noted above, Red River knows of no rear end collisions involving this type of trailer that has resulted in injuries.

No comments were received on the applications in response to the **Federal Register** notice.

Dan Hill's arguments are as cogent and relevant today as they have been in the past, and continue to support our findings that to require compliance would create substantial economic hardship to a manufacturer which has tried in good faith to comply with Standard No. 224, and that a temporary exemption would be in the public interest and consistent with the objectives of traffic safety. Accordingly, we hereby extend NHTSA Temporary Exemption No. 2001–3 from Standard No. 224 for a period of three years, to expire on May 1, 2006.

Red River's petition for extension is based on a different argument than that which supported its previous exemption: That in the absence of an exemption, it will be otherwise unable to sell a motor vehicle whose overall level of safety is at least equal to that of a complying vehicle. In our opinion, manufacturers of these trailers appear to have demonstrated that the design of their trailer is incompatible with the requirements of Standard No. 224, and that it is impracticable to engineer a horizontal discharge trailer that meets both the letter of the standard and the mission needs of the trailer. The decision to be made in a final rule whether or not to exclude horizontal discharge trailers from Standard No. 224 will include a weighing of relevant safety factors. It seems wisest, therefore, to postpone a discussion of safety considerations and a conclusion regarding them until the issuance of the agency's decision notice responding to the NPRM. Accordingly, we are making no findings on Red River's application and taking no further action at the present time regarding it. Red River's exemption will continue until the effective date of any amendment of Standard No. 224 to exclude horizontal discharge trailers. If the standard is not so amended, we shall proceed to make a decision on the basis of its 2003 petition and such information that we receive during the rulemaking process that may be relevant to such a decision.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on May 19, 2003.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 03–13064 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; Nissan

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Nissan North America, Inc. (Nissan) for an exemption of a high-theft line, the Infiniti M45, from the parts-marking requirements of the Federal motor vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. Nissan requested confidential treatment for some of the information and attachments submitted in support of its petition. In a letter to Nissan dated November 25, 2002, the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2004.

FOR FURTHER INFORMATION CONTACT: Mrs. Rosalind Proctor, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mrs. Proctor's phone number is (202) 366–4807. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated October 30, 2002 Nissan North America, Inc. (Nissan), requested an exemption from the parts-marking requirements of 49 CFR part 541, Federal Motor Vehicle Theft Prevention Standard, for the Infiniti M45 vehicle line beginning in MY 2004. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Nissan's submittal is considered a complete petition, as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Nissan requested confidential treatment for the information submitted in support of its petition. In a letter dated November 25, 2002, the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

In its petition, Nissan provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device will include both an audible and visual alarm and an engine-immobilizer system. The antitheft device is activated by moving the ignition key to the ''OFF'' position, closing the hood and trunk lid and closing and locking all of the doors. Therefore, once the key is turned to the ''OFF'' position and the ignition key is removed from the key cylinder, the antitheft systems are set.

In order to ensure the reliability and durability of the device, Nissan conducted tests based on its own specified standards. Nissan provided a detailed list of tests conducted and believes that its device is reliable and durable since the device complied with its specified requirements for each test.

Nissan compared the device proposed for its vehicle line with devices, which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft, as would compliance with the parts-marking requirements. Theft data have indicated a decline in theft rates for vehicle lines that have been equipped with antitheft devices similar to that which Nissan proposes.

On the basis of this comparison, Nissan has concluded that the antitheft device proposed for its vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by Nissan, the agency believes that the antitheft device for the Nissan Infiniti M45 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that Nissan has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Nissan provided about its device, much of which is confidential. This confidential information included a description of reliability and functional tests conducted by Nissan for the anti-theft device and its components.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for the MY 2004 Infiniti M45 vehicle line from the parts-marking requirements of 49 CFR 541. If Nissan decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting § 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 19, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–13061 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Material Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.,* to provide for additional hazardous materials, packaging design changes, additional mode of transportations, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before June 11, 2003

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 19, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
3216–M		Dupont SHE Excellence Center, Wilmington, DE (See Footnote (1))	3216
8995–M		BASF Corporation, Mount Olive, NJ (See Footnote (2))	8995
10878–M		Tankcon FRP Inc., Boisbriand, Qc (See Footnote (3))	10878
12443–M	RSPA–00–7209	Kinder Morgan Materials Services, Sewickley, PA (See Footnote (4))	12443
13116–M	RSPA–02–13306	Chromatography Research Supplies, Inc., Louisville, KY (See Footnote (5))	13116
13217–M	RSPA–03–14918	Belshire Environmental Services, Inc. Lake Forest, CA (See Footnote (6))	13217

(1) To modify the exemption to authorize the transportation of a Class 8 material in non-DOT specification multi-unit tank car tanks.
(2) To modify the exemption to authorize the transportation of a Class 3 material in a non-DOT specification portable tank.
(3) To modify the exemption to authorize the manufacture of non-DOT specification fiberglass reinforced plastic (FRP) cargo tanks with larger capacities.
(4) To modify the exemption to authorize hoses, containing a certain Class 3 material, to remain connected to a DOT Specification tank car during off hours using alternative monitoring procedures.
(5) To modify the exemption to clarify shipping requirements for the transportation of small quantities of self-heating solids in gas purifier system filters.
(6) To reissue the exemption originally issued on an emergency basis for the transportation of Class 3 materials in non-DOT specification packages.

[FR Doc. 03–13062 Filed 5–23–03; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 26, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt or comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 19, 2003.

R. Rayan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13229–N		Matheson Tri-Gas, East Rutherford, NJ.	49 CFR 173.304(b)	To authorize the transportation in commerce of phosphine, Division 2.3, in DOT Specification seamless cylinders with a service pressure of 4000 psi and a filling density not to exceed 0.45. (modes 1, 3)
13232–N		CP Industries, McKeesport, PA.	49 CFR 178.37(k)(2)(i), 178.37(l), 178.45(j)(1), 178.45(k)(2).	To authorize the transportation in commerce of DOT Specification cylinders which have received an alternative tensile test for use transporting compressed gases. (mode 1)
13233–N		Fuju Hunt Photographic Chemicals, Inc., Rolling Meadows, IL.	49 CFR 173.24a(c)	To authorize the transportation in commerce of corrosive materials in combination packagings with other hazardous materials without being further packed in another inner receptacle. (modes 1, 2, 3)
13235–N		Chart Industries, Ball Ground, GA.	49 CFR 172.203(a), 177.834(h).	To authorize filling and discharging of a DOT Specification 4L cylinder with carbon dioxide, refrigerated liquid without removal from the vehicle. (mode 1)
13237–N		Praxair, Inc., Danbury, CT.	49 CFR 173.302, 173.304, 173.304a, 173.338.	To authorize the transportation in commerce of non-DOT specification cylinders that are designed to a foreign specification for use in transporting various hazardous materials. (modes 1, 3)

[FR Doc. 03–13063 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–01–9832]

RIN 2137–AD59

Pipeline Safety: Hazardous Liquid Pipeline Operator Annual Report Form

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the RSPA Office of Pipeline Safety (OPS) published a Notice of Proposed Rulemaking (NPRM) on July 26, 2002, announcing RSPA's/OPS's intention to collect pipeline characteristics information via a hazardous liquid pipeline operator annual report form. RSPA/OPS received comments on the proposed form and changed the form accordingly. RSPA/OPS discussed the changes with the Technical Hazardous Liquids Pipeline Safety Standards Committee (THLPSSC) on March 25, 2003. RSPA/OPS has posted the proposed form in the docket so that the THLPSSC can review it.

RSPA/OPS will hold a public meeting (*see* docket RSPA–97–2426) on May 28, 2003, to discuss potential improvements to the current standard for data submission to the National Pipeline Mapping System. The meeting will include a discussion about whether, at a future date, some information sought by the proposed hazardous liquid annual report form may alternatively be obtained through the National Pipeline Mapping System.

ADDRESSES: You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Comments should identify the docket number of this notice, RSPA–01–9832. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard.

You may also submit or review comments electronically by accessing the Docket Management System's home page at http://dms.dot.gov. Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should identify the docket and notice numbers stated in the heading of this notice.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Roger Little, by telephone, at 202–366–4569; by fax at 202–366–4566; by mail at U.S. Department of Transportation, RSPA, 400 Seventh Street, SW., Room 7128, Washington, DC, 20590; or by e-mail at *roger.little@rspa.dot.gov.*

Issued in Washington, DC on May 20, 2003.

Richard D. Huriaux,

Manager, Regulations, Office of Pipeline Safety.

[FR Doc. 03–13065 Filed 5–23–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–355 (Sub–No. 28X)]

Springfield Terminal Railway Company—Discontinuance of Service Exemption—Manchester and Lawrence Branch, in Essex County, MA and Rockingham and Hillsborough Counties, NH

Springfield Terminal Railway Company (ST) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over two portions of a line of railroad, with a combined length of 11.97-miles, known as the Manchester and Lawrence Branch,[1] extending (a) from milepost

[1] ST acquired its leasehold interest in the line from Boston and Maine Corporation (B&M), an affiliate of ST, in *D&H Ry—Lease & Trackage Rights Exemp. Springfield Term.,* 4 I.C.C.2d 322 (1988). ST states that, prior to the effective date of this discontinuance, title to the line was or will be acquired by third parties.

1.40 to milepost 7.6 [2] and (b) from milepost 20.93 to milepost 26.70 [3] in Essex County, MA, and Rockingham and Hillsborough Counties, NH. The line traverses United States Postal Service Zip Codes 01840, 01841, 01843, 01844, 03079, 03101, 03103, and 03053.

ST has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 26, 2003,[4] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[5] must be filed by June 6, 2003. Petitions to reopen must be filed by June 16, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to ST's representative: Katherine E. Potter, Esq., Springfield Terminal Railway Company, Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 20, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–13147 Filed 5–23–03; 8:45 am]

BILLING CODE 4915–01–P

[2] B&M was authorized to abandon this portion of the line in *Boston and Maine Corporation—Abandonment—in Essex County, MA, and Rockingham County, NH,* STB Docket No. AB–32 (Sub-No. 90) (STB served Oct. 3, 2001), and in *Boston and Maine Corporation—Abandonment and Discontinuance of Service Exemption—Rockingham and Hillsboro Counties, NY,* STB Docket No. AB–32 (Sub-No. 88X) (STB served May 26, 2000).

[3] B&M was authorized to abandon this portion of the line in *Boston and Maine Corporation—Abandonment Exemption—in Rockingham and Hillsborough Counties, NH,* STB Docket No. AB–32 (Sub-No. 87X) (STB served July 2, 1999).

[4] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required under 49 CFR 1105.6(c) and 1105.8. Nevertheless, ST filed an environmental report with its notice. The Board's Section of Environmental Analysis (SEA) issued environmental assessments on July 9, 1999, April 7, 2000, and July 18, 2001, in connection with B&M's previously noted abandonment of these segments of the line.

[5] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 19, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1086.

Form Number: IRS Form 8725.

Type of Review: Revision.

Title: Excise Tax on Greenmail.

Description: Form 8725 is used by persons who receive ''greenmail'' to compute and pay the excise tax paid on greenmail imposed under section 5881. The IRS uses the information to verify that the correct amount of tax has been reported.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 12.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hr., 30 min.

Learning about the law or the form—1 hr., 0 min.

Preparing and sending the form to the IRS—1 hr., 7 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 92 hours.

OMB Number: 1545–1504.

Form Number: IRS Form 911.

Type of Review: Extension.

Title: Application for Taxpayer Assistance Order (ATAO).

Description: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails to take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the state or city where the taxpayer lives.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Estimated Number of Respondents: 93,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 46,500 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 03–13159 Filed 5–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 15, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this

information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1828.

Regulation Project Number: REG–131478–02 NPRM and Temporary.

Type of Review: Extension.

Title: Guidance Under Section 1502; Suspension of Losses on Certain Stock Disposition.

Description: The information in § 1.1502–35T(c) is necessary to ensure that a consolidated group does not obtain more than one tax benefit from both the utilization of a loss from the disposition of stock and the utilization of a loss or deduction with respect to another asset that reflects the same economic loss; to allow the taxpayer to make an election under § 1.1502–35T(c)(5) that would benefit the taxpayer; the election in § 1.1502–35T(f) provides taxpayers the choice in the case of a worthless subsidiary to utilize a worthless stock deduction or absorb the subsidiary's losses; and § 1.1502–35T(g)(3) applies to ensure that taxpayers do not circumvent the loss suspension rule of § 1.1502–35T(c) by deconsolidating a subsidiary and then re-importing to the group losses of such subsidiary.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 7,475.

Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 15,000 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–13160 Filed 5–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2555–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2555–EZ, Foreign Earned Income Exclusion.

DATES: Written comments should be received on or before July 28, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Foreign Earned Income Exclusion.

OMB Number: 1545–1326.

Form Number: 2555–EZ.

Abstract: U.S. citizens and resident aliens who qualify may use Form 2555–EZ instead of Form 2555, Foreign Earned Income, to exclude a limited amount of their foreign earned income. Form 2555–EZ is a simpler form that can be used by taxpayers whose foreign earned income is $80,000 or less and who satisfy certain other conditions. The information on the form is used by the IRS to determine if a taxpayer qualifies for, and has properly computed, the foreign earned income exclusion.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 43,478.

Estimated Time Per Respondent: 2 hours, 5 minutes.

Estimated Total Annual Burden Hours: 84,782.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 20, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–13167 Filed 5–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

DATES: The meeting will be held Tuesday, June 17, 2003, at 1:30 p.m., Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, June 17, 2003, from 1:30 to 3 p.m. Eastern daylight time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 20, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–13168 Filed 5–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, June 18, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, June 18, 2003 from 2 p.m. EDT to 3 p.m. EDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 20, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–13169 Filed 5–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, June 20, 2003, and Saturday, June 21, 2003

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Friday, June 20, 2003, from 9 a.m. ET, to Noon ET; and from 1 p.m. ET to 5 p.m. ET; and on Saturday, June 21, 2003, from 8 a.m. ET to Noon ET, in Philadelphia, PA. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Public comments will also be welcome during the meeting. Individual comments will be limited to 5 minutes. Please contact Inez E. De Jesus at 1–888–912–1227 or 954–423–7977 for more information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 20, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–13170 Filed 5–23–03; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Friday, June 20, 2003.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, June 20, 2003, from 11 a.m. EDT to 12:30 p.m. EDT via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines,

notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 20, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–13171 Filed 5–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted in Andover, Massachusetts.

DATES: The meeting will be held Friday, June 20 and Saturday, June 21, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Friday, June 20, 2003 from 1 p.m. to 4 p.m. EDT and Saturday, June 21, 2003 from 9 a.m. to 12 p.m. EDT in Andover, MA. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For more information and to confirm attendance, notification of intent to attend the meeting must be made with Marisa Knispel. Mrs. Knispel may be reached at 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, Tap Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org*.

The agendas will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 20, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–13172 Filed 5–23–03; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held on July 29–30, 2003, at the Hamilton Crowne Plaza Hotel, 1001 14th Street, NW., Washington, DC. The sessions are scheduled to begin at 8 a.m. and end at 5:30 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the July 29 session from 8 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program and the administrative details of the review process. On July 29, from 9 a.m. through July 30, the meeting will be closed for the Board's review of research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Sections 10(d) of Public Law 92–463 as amended by Section 5(c) of Public Law 94–409.

Those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, at (202) 408–3684.

Dated: May 19, 2003.

By Direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–13077 Filed 5–23–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will conduct site visits to the Carl T. Hayden VA Medical Center (VAMC), 650 East Indian School Road, Phoenix, AZ 85012, and several other VA facilities in the area. The site visits will be held on June 16–20, 2003, from 8 a.m. until 4 p.m., each day and will be open to the public .

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by the VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such programs and activities.

On June 16, the agenda topics for this meeting will include briefings and updates by the key leadership group at the Carl T. Hayden VAMC and the Women Veterans Program Managers in Veterans Integrated Services Network (VISN) 18. Tours of the Carl T. Hayden VAMC, including the ambulatory care clinics, will be conducted. On June 17, briefings and updates by the key leadership group at the Carl T. Hayden VAMC will continue. On June 18, site visits will be made to the VISN 18 facilities and community-based outpatient clinics in Mesa. On June 19, site visits will be made to the National Memorial Cemetery of Arizona and the State Veterans Home. On June 20, an open forum and town hall meeting with the women veterans' community will be held at the Carl T. Hayden VAMC.

Any member of the public wishing to attend should contact Mrs. Desiree W. Long, at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420. Mrs. Long may be contacted either by phone at (202)

273–6193, fax at (202) 273–7093 or e-mail at *00W@mail.va.gov.* Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: May 19, 2003.

By Direction of the Secretary,

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–13078 Filed 5–23–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Department of Justice, Bureau of Prison (BOP), inmate records with VA pension, compensation, and dependency and indemnity compensation (DIC) records. The goal of this match is to identify incarcerated veterans and beneficiaries who are receiving VA benefits, and to reduce or terminate benefits, if appropriate. The match will include records of current VA beneficiaries.

DATES: The match will start no sooner than 30 days after publication of this notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to conduct the matching program to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1158, 810 Vermont Avenue, NW., Washington, DC 20420, between 8 a.m. and 4:30 p.m., Monday through Fridays except holidays.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge (212B), (202) 273–7218.

SUPPLEMENTARY INFORMATION: VA will use this information to verify incarceration and adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to accurately identify beneficiaries who are incarcerated for a felony or a misdemeanor in a Federal penal facility.

The legal authority to conduct this match is 38 U.S.C. 1505, 5106, and 5313. Section 5106 requires any Federal department or agency to provide VA such information as VA requests for the purposes of determining eligibility for, or the amount of VA benefits, or verifying other information with respect thereto. Section 1505 provides that no VA pension benefits shall be paid to or for any person eligible for such benefits, during the period of that person's incarceration as the result of conviction of a felony or misdemeanor, beginning on the sixty-first day of incarceration. Section 5313 provides that VA compensation or dependency and indemnity compensation above a specified amount shall not be paid to any person eligible for such benefits, during the period of that person's incarceration as the result of conviction of a felony, beginning on the sixty-first day of incarceration.

The VA records involved in the match are the VA system of records, VA Compensation, Pension and Education and Rehabilitation Records—VA (58 VA 21/22)'', first published at 41 FR 9294 (March 3, 1976), and last amended at 66 FR 47725 (9/13/01) with other amendments as cited therein. The BOP records consist of information from the system of records identified as Inmate Central Records System, BOP #005 published on June 7, 1984 (48 FR 23711). In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget. This notice is provided in accordance with the provisions of Privacy Act of 1974 as amended by Public Law 100–503.

Approved: May 8, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–13076 Filed 5–23–03; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 289/P.L. 108–23

Ottawa National Wildlife Refuge Complex Expansion and Detroit River International Wildlife Refuge Expansion Act (May 19, 2003; 117 Stat. 704)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

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