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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–173–AD; Amendment 39–13364; AD 2003–23–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, 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, –400D, and –400F series airplanes, that requires reviewing airplane maintenance records; inspecting the yaw damper actuator portion of the upper and lower rudder power control modules (PCM) for cracking, and replacing the PCMs if necessary; and reporting airplane maintenance records review and inspection results to the manufacturer. This action is necessary to detect and correct cracking in the yaw damper actuator portion of the upper and lower rudder PCMs, which could result in an uncommanded left rudder hardover, consequent increased pilot workload, and possible runway departure upon landing. This action is intended to address the identified unsafe condition.

DATES: Effective December 18, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 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: Doug Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; 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 747–400, –400D, and –400F series airplanes was published in the **Federal Register** on August 28, 2003 (68 FR 51735). That action proposed to require reviewing airplane maintenance records; inspecting the yaw damper actuator portion of the upper and lower rudder power control modules (PCM) for cracking, and replacing the PCMs if necessary; and reporting airplane maintenance records review and inspection results to the manufacturer.

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.

Agreement With the Notice of Proposed Rulemaking (NPRM)

Two commenters state that they agree with the NPRM.

Request To Revise Paragraph (f) of the NPRM

One commenter requests that paragraph (f) of the NPRM be revised to permit installation of the components without continuing inspections at each installation of the components. The commenter states that it does not believe that is the intent of the applicable service bulletin. The commenter further states that, without specific relief, paragraph (f) of the NPRM will eventually require inspections on parts with fewer total flight hours or total flight cycles than the thresholds specified by the NPRM.

The FAA notes that the requirements of paragraph (f) of the final rule to prohibit units that have reached the thresholds specified in paragraph (f) of the final rule (15,000 total flight hours or more or 2,000 total flight cycles or more) may impose a burden to the affected operators. However, as noted in the ''Interim Action'' section of the NPRM, we consider the actions specified in this final rule to be interim actions, since the root cause of the fatigue cracking has not been determined. We are trying to gain better insight into the nature, cause, extent of the cracking, and to develop a final action for the unsafe condition. However, to prevent continuing inspections upon each installation, we acknowledge that some relief should be provided. Therefore, we have revised paragraph (f) of the final rule to specify that a rudder PCM with 15,000 total flight hours or more or 2,000 total flight hours or more may not be installed ''unless it has been inspected within the previous 15,000 flight hours or 2,000 flight cycles'' of the PCM. We have determined that the relief provided by revising paragraph (f) of the final rule will continue to provide an acceptable level of safety for the fleet.

Request To Clarify the Term Power Control Modules ''PCMs''

One commenter, the airplane manufacturer, requests that use of the term ''PCM'' in the NPRM be clarified by adding the following words: ''with a main manifold.'' The commenter notes that the 15,000 total flight hours and 2,000 total flight cycle thresholds are based on the life of the PCM main manifold.

We agree that clarification is necessary, and have revised the final rule accordingly.

Request To Extend the Compliance Time

One commenter requests that the compliance time be extended from ''within 3 months after the effective date of the AD'' to ''within 1 year after the effective date of the AD'' for the following reasons:

- Tool Availability—The commenter notes that Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003, states that no special tools are needed to perform the proposed ultrasonic inspection. However, the commenter points out that two special tools are actually needed and that it was only recently able to obtain them.

• Accessibility—The commenter states that hangar availability will cause a problem, since the hangars available for inspecting airplanes affected by the NPRM are always occupied by airplanes undergoing heavy maintenance. The commenter states that it will lose valuable time for its fleet if it has to inspect within the proposed 3-month compliance time.

• Inspection Criteria—The commenter notes that the applicable service bulletin does not specify repetitive inspections or any terminating action. The commenter thinks that the inspection is mainly to collect data and, therefore, cannot understand the urgency of the 3-month compliance time.

We do not agree with the commenter's request. As stated previously in this final rule, the root cause of the fatigue cracking has not been determined. Because the root cause is unknown, we do not know if the fatigue cracking that was reported is a random event or if it may indicate that the structural life of the PCMs with a main manifold is shorter than expected. We agree with the referenced service bulletin that special tools are not necessary to perform the ultrasonic inspection. However, the manufacturer has advised that other tools used as aids in performing the inspection are available to operators. Additionally, we acknowledge that the commenter may lose time for its fleet if it has to inspect within the proposed 3-month compliance time. However, because of the severe consequences of the unsafe condition existing and the fact that there were apparently no indications of a crack developing, we have determined that the 3-month compliance time is prudent and appropriate. No change is necessary to the final rule in this regard. However, under the provisions of paragraph (g) of the final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Revise Criterion for Applicable Airplanes

One commenter requests that the criterion for airplanes specified to perform the proposed inspections be revised from 15,000 total flight hours or more or 2,000 total flight cycles or more to 55,000 total flight cycles or 7,500 total flight cycles, as specified by Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003. The commenter states that its service experience supports the criterion specified in the applicable service bulletin.

We do not agree with the commenter's request. We acknowledge that the applicable service bulletin does specify that the reported incident occurred on a rudder PCM with approximately 55,000 flight hours and 7,500 flight cycles, and that the airplanes that were chosen for the investigation had accumulated at least 55,000 flight hours and 7,500 flight cycles. However, the Accomplishment Instructions (paragraph 3.B.1 of the applicable service bulletin) clearly states that, ''If your records show that the upper and lower rudder PCMs each have a main manifold with less than 15,000 flight hours or 2,000 flight cycles: It is not necessary to do the inspections* * *'' We have evaluated these criteria and conclude that the appropriate criterion for applicable airplanes to be inspected is those airplanes with PCMs that have accumulated 15,000 total flight hours or 2,000 total flight hours. No change to the final rule is necessary in this regard.

Request To Revise Sensitivity Level of Dye Penetrant Inspection

One commenter, the PCM manufacturer, requests that the sensitivity level of the dye penetrant inspection for PCMs that are cracked and returned to the manufacturer be revised. The commenter notes that, after the issuance of Boeing Alert Service Bulletin 747–27A2397, it increased the inspection sensitivity level from Level 3 to Level 4 for those PCMs that were returned.

We recognize the commenter's expertise and appreciate the information it has provided. This final rule requires PCMs with any cracking to be returned to the PCM manufacturer, but does not specify the inspection process to be used by the PCM manufacturer. Therefore, the change in sensitivity level of the dye penetrant inspection on PCMs returned to the PCM manufacturer does not directly affect the requirements of this AD. No change to this final rule is necessary in this regard.

Request for Industry To Provide Operational Procedures

One commenter states that industry must develop a set of operational procedures to allow flight crews to deal with a flight situation such as the one described in the NPRM. The commenter agrees with the actions proposed in the NPRM, but specifies that additional procedures for flight crews are necessary.

We acknowledge the commenter's concern. As previously explained, we consider this final rule to be interim action. Based on the findings of the reports to be submitted and any other pertinent information, we may consider further rulemaking actions. However, until such findings are made known and further actions developed, we consider the actions specified in the final rule to provide an acceptable level of safety. Therefore, no change to the final rule is necessary in this regard.

Conclusion

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

Interim Action

We consider this final rule interim action. The inspection reports that are required by this final rule will enable the manufacturer and the FAA to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Cost Impact

There are approximately 180 airplanes of the affected design in the worldwide fleet. The FAA estimates that 13 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the airplane maintenance records review, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $845, or $65 per airplane.

Should an operator be required to accomplish the inspection, it will take approximately 4 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection is estimated to be $260 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:

2003–23–01 Boeing: Amendment 39–13364. Docket 2003–NM–173–AD.

Applicability: Model 747–400, –400D, and –400F series airplanes, as listed in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the yaw damper actuator portion of the upper and lower rudder power control module (PCM) main manifolds, which could result in an uncommanded left rudder hardover, consequent increased pilot workload, and possible runway departure upon landing, accomplish the following:

Review of Airplane Maintenance Records

(a) Within 3 months after the effective date of this AD: Review the airplane maintenance records to determine if each PCM has a main manifold with less than 15,000 total flight hours or fewer than 2,000 total flight cycles, or do the inspection required by paragraph (c) of this AD.

Follow-on Actions: PCMs With a Main Manifold Having Less Than 15,000 Total Flight Hours or Less Than 2,000 Flight Cycles

(b) If it can be positively determined from the review of the airplane maintenance records that each rudder PCM has a main manifold that is below either of the thresholds specified in paragraph (a) of this AD: Submit a report to the manufacturer in accordance with paragraph (d) of this AD.

Follow-on Actions: PCMs With a Main Manifold Having 15,000 Total Flight Hours or More and 2,000 Flight Cycles or More

(c) If it cannot be positively determined that each rudder PCM has a main manifold that is below either of the thresholds specified in paragraph (a) of this AD: Within 3 months after the effective date of this AD, do an ultrasonic inspection of the yaw damper actuator portion of the upper and lower rudder PCM main manifold in accordance with the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003. After completing the actions required by paragraph (c)(1) or (c)(2) of this AD, as applicable, submit a report to the manufacturer in accordance with paragraph (d) of this AD.

(1) If no cracking is found: Apply sealant and a torque stripe and install a lockwire on the applicable rudder PCM per Figure 1 or Figure 2, as applicable, and the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003.

(2) If any cracking is found: Before further flight, replace the affected PCM with a PCM with a main manifold having less than 15,000 total flight hours and less than 2,000 total flight cycles, or a PCM with a main manifold that has been inspected by the supplier (Parker Hannifin Corporation) or ultrasonically inspected in accordance with the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003.

Reporting Requirements

(d) At the applicable time specified in paragraph (d)(1) or (d)(2) of this AD, accomplish paragraph (e).

(1) If the inspection was done after the effective date of this AD: Submit the report and PCM, if applicable, within 20 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report and PCM, if applicable, within 20 days after the effective date of this AD.

(e) Do the requirements of paragraphs (e)(1) and (e)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) Submit a report of the airplane maintenance records review or the inspection findings (positive and negative) to: The Boeing Company, Service Engineering—Mechanical Systems, Attn: R. Adams, fax: (425) 342–5224. The report must contain the airplane and rudder PCM serial numbers, the total flight hours and flight cycles for each rudder PCM (and rudder PCM main manifold, if known), and a description of any damage found. Submission of the Inspection Report Form (Figure 3 of Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003) is an acceptable method of complying with this requirement.

(2) Send parts to Parker Hannifin Corporation in accordance with the shipping instructions specified in Appendix A of the service bulletin.

Parts Installation

(f) As of the effective date of this AD, no person shall install on any airplane a rudder PCM with a main manifold having 15,000 total flight hours or more, or 2,000 total flight cycles or more, unless it has been ultrasonically inspected (either by the operator or the supplier) within the previous 15,000 flight hours or 2,000 flight cycles, in accordance with the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(h) Unless otherwise specified, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–27A2397, dated July 24, 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 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 December 18, 2003.

Issued in Renton, Washington, on November 3, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28089 Filed 11–12–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–225–AD; Amendment 39–13365; AD 2003–23–02]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 560 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Cessna Model 560 airplanes. This action requires disengaging and tie-strapping the pitch trim and autopilot servo (servo 1) circuit breakers. This action also provides an optional inspection and follow-on actions that, if accomplished, terminates the requirement to disengage and tie-strap those circuit breakers. This action is necessary to prevent a single-point failure in the trim system from causing a runaway trim condition that the pilot may be unable to stop by using the autopilot-disconnect switch. This condition could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 28, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 2003.

Comments for inclusion in the Rules Docket must be received on or before January 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–225–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–225–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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: Bryan Easterwood, Aerospace Engineer, Systems and Equipment Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4132; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION: The FAA has received a report of an accident involving a Cessna Model 525 airplane. The pilot reported a problem with the trim system and was forced to ditch the airplane in the water near Coupeville, Washington. Although the final investigation by the National Transportation Safety Board is not complete, investigation revealed a discrepancy that could allow single-wire shorting to 28 volts or the failure of a relay in the trim system such that the relay contacts remain closed. In addition, the pilot may be unable to stop the runaway trim condition by pressing the red autopilot-disconnect switch located on the control wheel, due to the design of the trim system on a certain serial number range of airplanes. A runaway trim condition that the pilot is unable to stop by using the autopilot-disconnect switch could result in loss of control of the airplane.

The design of the trim system on certain Cessna Model 560 airplanes is the same as that on certain Cessna Model 525 airplanes. Therefore, Model 560 airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

We have reviewed and approved Cessna Alert Service Letter ASL560–27–10, dated October 10, 2003. Among other actions, that service letter describes procedures for disengaging the pitch trim and autopilot (AP) servo (servo 1) circuit breakers and tie-strapping those circuit breakers so that they may not be engaged. Accomplishment of these actions specified in the service letter is intended to adequately address the identified unsafe condition.

Cessna Alert Service Letter ASL560–27–10 also describes procedures for an inspection to determine the part number of the installed trim pc board assembly, and follow-on actions. The follow-on actions include replacement of the assembly with an improved assembly and installation of an extension cap on the pitch trim circuit breaker, as applicable. Once the inspection and applicable follow-on actions have been accomplished, the tie straps on the pitch trim and AP servo circuit breakers may be removed and those circuit breakers may be re-engaged.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires disengaging and tie-strapping the pitch trim and AP servo circuit breakers. This AD also provides for an optional inspection and follow-on actions that terminates the requirement for disengaging and tie-strapping those circuit breakers. These actions must be accomplished per the service letter described previously, except as discussed below.

Differences Between This AD and Service Letter

Although the service letter requires that the disengaging and tie-strapping of the pitch trim and AP servo circuit breakers be accomplished upon receipt of the service letter, this AD allows accomplishment of these actions within 5 days or 10 hours time-in-service after the effective date of this AD, whichever is first. We find that such a compliance time represents an appropriate compliance time for affected airplanes to continue to operate without compromising safety.

Although the service letter is effective for certain Model 560 airplanes having serial numbers 0260 through 0538 inclusive, this AD is applicable to certain Model 560 airplanes having serial numbers 0260 through 0396 inclusive. While the discrepancy that could allow a single-point failure in the trim system, causing a runaway trim condition, may occur on any airplane having a serial number in the range 0260 through 0538 inclusive, on airplanes having serial numbers 0397 through 0538 inclusive, the pilot would be able to stop the runaway trim condition by pressing the red autopilot-disconnect switch located on the control wheel. Therefore, we have determined that an acceptable level of safety exists on airplanes having serial numbers 0397 through 0538 inclusive, and it is not

necessary to require disengaging and tie-strapping of the pitch trim and AP servo circuit breakers on these airplanes at this time.

Although the Accomplishment Instructions of the service letter describe procedures for sending a maintenance transaction report to the manufacturer, this AD does not require this action.

Interim Action

We consider this proposed AD interim action. We are currently considering requiring the optional terminating action provided in this AD—inspection of the trim pc board assembly and follow-on actions, which would eliminate the need for the tie straps on the pitch trim and AP servo circuit breakers, and would allow those circuit breakers to be re-engaged. However, the planned compliance time for such actions would likely allow enough time to provide notice and opportunity for prior public comment on the merits of those actions.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–225–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–23–02 Cessna Aircraft Company: Amendment 39–13365. Docket 2003–NM–225–AD.

Applicability: Model 560 airplanes, having serial numbers 0260 through 0396 inclusive, certificated in any category; except those on which Cessna Service Bulletin 560–34–93, dated March 16, 2001, has been accomplished.

Compliance: Required as indicated, unless accomplished previously.

To prevent a single-point failure in the trim system from causing a runaway trim condition that the pilot may be unable to stop by using the autopilot disconnect switch, which could result in loss of control of the airplane, accomplish the following:

Disengaging and Tie-Strapping Circuit Breakers

(a) Within 5 days or 10 hours time-in-service after the effective date of this AD, whichever is first: Disengage the PITCH TRIM circuit breaker on the left circuit breaker panel and the SERVO 1 circuit breaker on the right circuit breaker panel, and install tie straps on those circuit breakers, per paragraphs 1.A. and 1.B. of the Accomplishment Instructions of Cessna Alert Service Letter ASL560–27–10, dated October 10, 2003.

Optional Inspection and Corrective Actions

(b) Accomplishment of the inspection of the trim pc board assembly to determine the part number of the assembly and all applicable follow-on actions; per paragraphs 2.A., 2.B., and 2.C. of the Accomplishment Instructions of Cessna Alert Service Letter ASL560–27–10, dated October 10, 2003; terminates the requirements of paragraph (a) of this AD. Once the inspection and applicable follow-on actions have been accomplished, the tie straps on the pitch trim and autopilot servo circuit breakers may be removed and those circuit breakers may be re-engaged.

Parts Installation

(c) As of the effective date of this AD, no person may install a trim pc board assembly having part number 6518351–3 or –5 on any airplane.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Wichita Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) The actions shall be done in accordance with Cessna Alert Service Letter ASL560–27–

10, dated October 10, 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 Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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 November 28, 2003.

Issued in Renton, Washington, on November 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28166 Filed 11–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–68–AD; Amendment 39–13362; AD 2003–22–14]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Models Tay 650–15 and 651–54 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc) models Tay 650–15 and 651–54 turbofan engines with certain part numbered fan blades and fan discs. That AD currently requires initial and repetitive visual and ultrasonic inspections of fan blades for cracks, and, if necessary, replacement with serviceable parts. In addition, that AD requires recording instances when engines are operated in a stabilized manner in newly prohibited ranges. This ad has the same requirements. In addition, this AD requires recording instances when engines are operated inadvertently in reverse thrust in prohibited ranges, and requires before further flight, initial and repetitive ultrasonic inspections of fan blades for cracks and if necessary, dispositioning of fan blades and fan discs, if certain reverse thrust events occurred. This AD is prompted by updated prohibited ranges of engine operation and the introduction of an N1 Alert System in Fokker Model F.28 Mark 0100 airplanes with Tay 650–15 engines installed. We are issuing this AD to prevent fan blade failures, which can result in an uncontained engine failure, engine fire, and damage to the airplane.

DATES: This AD becomes effective December 18, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 18, 2003.

ADDRESSES:

You can get the service information identified in this AD from Rolls-Royce plc, Technical Publications Department, PO Box 31, Derby, England DE248BJ; telephone 44 1332 242424, fax 44 1332 249936.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc) models Tay 650–15 and 651–54 turbofan engines with certain part numbered fan blades and fan discs. We published the proposed AD in the **Federal Register** on May 28, 2003 (68 FR 31642). That action proposed to require initial and repetitive visual and ultrasonic inspections of fan blades for cracks, and, if necessary, replacement with serviceable parts. In addition, that action proposed to require recording instances when engines are operated in a stabilized manner in newly prohibited ranges. That action also proposed to require recording instances when engines are operated inadvertently in reverse thrust in prohibited ranges, and proposed to require, before further flight, initial and repetitive ultrasonic inspections of fan blades for cracks, and, if necessary, dispositioning of fan blades and fan discs, if certain reverse thrust events occurred.

Comments

We provided the public with the opportunity to participate in the development of this AD. We have considered the comments received.

Request For 1-Cycle Extension

One commenter states that according to Table 1 of the NPRM, if a powerback event is performed with a Fokker Model F.28 Mark 0100 airplane that is not equipped with the N1 Alert System, and the pilot believes the fan speed (N1) reached or exceeded 57%, for 7.5 seconds or more, the pilot must stop the flight. The flight data recorder must be checked to determine whether or not 57% N1 was exceeded and duration was exceeded. If N1 and duration exceeded the limits, the fan blades must be inspected. The airplane can be returned to service only after these steps have been done. The commenter requests that we change Table 1 of the AD to allow a 1-cycle extension before downloading the data from the flight data recorder. This extension would be allowed only if the flight crew stated that the powerback event was in the N1 range of 57% to 75% range for 2 seconds or less.

The FAA agrees. This request is based on a previously approved alternative method of compliance, for AD 2001–22–18. We have added a paragraph to this AD that allows a 1 flight-cycle extension for Tay 650–15 engines with an N1 alert system not installed, or installed but not operative, if a powerback event is in the N1 range of 57% to 75% N1 for 2 seconds or less. We have also added a reference to that paragraph in Table 1 of the AD.

Request for 50-Cycle Allowance

One commenter states that according to Table 1 of the NPRM, if a nonpowerback reverse thrust event is performed with a Fokker Model F.28 Mark 0100 airplane that is not equipped with the N1 Alert System, and the N1 speed was above idle, then before the next flight, the data from the flight data recorder must be downloaded to determine whether the N1 limit and duration were exceeded, and if they were, the fan blades must be inspected before further flight. The commenter states that this conflicts with RRD Service Bulletin (SB) No. Tay 72–1447, which only requires that the inspection be done within 50 cycles of the suspect event, if it is confirmed that the N1 limit and duration were exceeded. The SB cycle allowance is only applicable if it can be determined that the engine does not already have an event during which the reverse thrust exceeded idle and has not had the 1,000 to 1,500 cycle follow-

up inspection. The commenter requests the 50-cycle allowance be incorporated into the AD.

The FAA agrees. The intent of the proposed AD is to follow the requirements of RRD SB No. Tay 72–1447, Revision 4, dated May 8, 2002. We have identified areas in Table 1 of the NPRM that need improvement. We have changed the wording in the fifth column of Table 1, item (1)(ii)(A), of this AD, to be less restrictive and to encompass the 50-cycle allowance specified in the SB, for Tay 650–15 engines.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs the FAA's AD system. That regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. The material previously was included in each individual AD. Since the material is included in 14 CFR part 39, we will not include it in future AD actions.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

(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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 98–ANE–68–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. The FAA amends § 39.13 by removing Amendment 39–12497 (66 FR 56755, November 13, 2001) and by adding a new airworthiness directive, Amendment 39–13362, to read as follows:

2003–22–14 Rolls-Royce Deutschland Ltd & Co KG: Amendment 39–13362. Docket No. 98–ANE–68–AD. Supersedes AD 2001–22–18, Amendment 39–12497.

Effective Date

(a) This AD becomes effective December 18, 2003.

Affected ADs

(b) This AD supersedes AD 2001–22–18.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc) models Tay 650–15 turbofan engines with fan blades, part numbers (P/Ns) JR31911, JR31912, JR33865, JR33866, JR35120, or JR35121, installed in fan discs P/N JR31198A, and Tay 651–54 turbofan engines with fan blades P/Ns JR31911, JR31912, JR33865, or JR33866, installed in fan discs P/N JR34563A. These engines are installed on, but not limited to, Fokker Model F.28 Mark 0100, and Boeing 727–100 series airplanes modified in accordance with Supplemental Type Certificate (STC) SA8472SW (727–QF).

Unsafe Condition

(d) This AD is prompted by updated prohibited ranges of engine operation and the introduction of an N1 Alert System in Fokker Model F.28 Mark 0100 airplanes with Tay 650–15 engines installed. The actions specified in this AD are intended to prevent fan blade failures, which can result in an uncontained engine failure, engine fire, and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Record Operation in Prohibited Operating Ranges

(f) If an engine is operated inadvertently in reverse thrust within the prohibited ranges described in RRD Service Bulletin (SB) No. Tay 72–1447, Revision 4, dated May 8, 2002, paragraph 1.C., as applicable by engine model, then before further flight make an entry in the engine records that reflects that operation. If known, include the stabilized N1 speed in the engine records.

Inspections

(g) Perform initial and repetitive ultrasonic inspections (UI) of fan blades each time an engine is operated inadvertently in reverse thrust within the prohibited ranges described in RRD SB No. Tay 72–1447, Revision 4, dated May 8, 2002, paragraph 1.C., as specified in the following Table 1:

TABLE 1. INITIAL AND REPETITIVE INSPECTION CRITERIA

Airplane and engine model	N1 alert system status (installed per Fokker SB F100–31–060)	Was this a powerback event?	If inadvertent reverse thrust event was:	Then before next flight:
(1) Fokker 0100; Tay 650–15.	(i) Installed and operative.	(A) No	Between 57% and 75% N1 speed for 7.5 seconds or more.	Perform UI and if necessary, disposition parts in accordance with paragraphs 3. and 3.A. of RRD SB No. Tay 72–1447, Revision 4, dated May 8, 2002.
		(B) Yes	Between 57% and 75% N1 speed for 7.5 seconds or more.	Perform UI and if necessary, disposition parts in accordance with paragraphs 3. and 3.B. of RRD SB No. Tay 72–1447, Revision 4, dated May 8, 2002.

TABLE 1. INITIAL AND REPETITIVE INSPECTION CRITERIA—Continued

Airplane and engine model	N1 alert system status (installed per Fokker SB F100–31–060)	Was this a powerback event?	If inadvertent reverse thrust event was:	Then before next flight:
	(ii) Not installed, or installed but not operative.	(A) No	N1 speed above idle for any reason.	Perform paragraphs 3. and 3.A. of RRD SB No. Tay 72–1447, Revision 4, dated May 8, 2002, unless it can be proven by flight data recorder information that engine operation between 57% and 75% N1 speed lasted less than 7.5. seconds.
		(B) Yes	Between 57% and 75% N1 speed.	If it can be determined that the event lasted for 2 seconds or less, go to paragraph (h) of this AD. Otherwise, perform UI and if necessary, disposition parts in accordance with paragraphs 3. and 3.B. of RRD SB No. Tay 72–1447, Revision 4, dated May 8, 2002, unless it can be proven by flight data recorder information that engine operation between 57% and 75% N1 speed lasted less than 7.5 seconds.
(2) Boeing 727–QF; Tay 651–54.	Not applicable.	Not applicable.	Between 57% and 75% N1 speed for 7.5 seconds or more, or if the parameters cannot be confirmed.	Perform UI and if necessary, disposition parts in accordance with paragraphs 3. and 3.A. of RRD SB No. Tay 72–1447, Revision 4, dated May 8, 2002.

One Flight-Cycle Allowance for Tay 650–15 Engines

(h) You may operate a Tay 650–15 engine that has an N1 alert system installed but not operative, or that does not have an N1 alert system installed, for 1 flight cycle before downloading the flight data recorder information as required in (1)(ii)(B) of Table 1 of this AD, if the flight crew determines that the operation in the prohibited speed range during a powerback event was 2 seconds or less.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR part 39.19.

Material Incorporated by Reference

(j) You must use Rolls-Royce Service Bulletin No. Tay 72–1447, Revision 4, dated May 8, 2002, to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce plc, Technical Publications Department, PO Box 31, Derby, England DE248BJ; telephone 44 1332 242424, fax 44 1332 249936. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Related Information

(k) CAA airworthiness directives 008–10–97, dated October 31, 1997, and 001–12–97, dated December 19, 1997 also address the subject of this AD.

Issued in Burlington, Massachusetts, on October 31, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–27924 Filed 11–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–21–AD; Amendment 39–13361; AD 2003–22–13]

RIN 2120–AA64

Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd. Models N22B and N24A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all AeroSpace Technologies of Australia Pty Ltd. (ASTA) Models N22B and N24A airplanes. This AD requires you to visually inspect the ailerons for damage and replace if necessary; adjust the engine power levers aural warning microswitches; set flap extension and flap down operation limitations; and fabricate and install cockpit flap extension and flap down operation restriction placards. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. We are issuing this AD to prevent damage to the aileron due to airplane operation and pre-existing and undetected damage, which could result in failure of the aileron. Such failure could lead to reduced or loss of control of the airplane.

DATES: This AD becomes effective on December 23, 2003.

As of December 23, 2003, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–21–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; facsimile (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified FAA that an unsafe condition may exist on all ASTA Models N22B and N24A airplanes. The CASA reports several incidents of ailerons incurring damage during flight. Extensive tests and

analysis revealed that the cause of the damage to the ailerons is a result of operation outside approved limits and undetected pre-existing damage. This condition causes the aileron to flutter as well as damage and failure.

The CASA lowered the operational limits of the affected airplanes in order to prevent damage from occurring. Additional reports of aileron flutter have been received even when operating within these lower approved limits.

As a precautionary measure, the CASA is further restricting flight operations.

What is the potential impact if FAA took no action? If this condition is not corrected, it could result in aileron failure. Such failure could lead to reduced or loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all ASTA Models N22B and N24A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 18, 2003 (68 FR 49390). The NPRM proposed to visually inspect the ailerons for damage and replace if necessary; adjust the engine power levers aural warning microswitches; set flap extension and flap down operation limitations; and fabricate and install cockpit flap extension and flap down operation restriction placards.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 10 airplanes in the U.S. registry.

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

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	Not applicable	$60	10 × $60 = $600

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of this inspection. We have no way of determining the number of airplanes that may need such repair/replacement:

Labor cost	Parts cost	Total cost per airplane
10 workhours × $60 per hour = $600	$1,250	$600 + $1,250 = $1,850

We estimate the following costs to accomplish the modifications:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
10 workhours × $60 per hour = $600	$100	$700	$700 × 10 = $7,000

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–21–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–22–13 Aerospace Technologies of Australia PTY Ltd.: Amendment 39–13361; Docket No. 2003–CE–21–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on December 23, 2003.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) *What airplanes are affected by this AD?* This AD affects Models N22B and N24A airplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. The actions specified in this AD are intended to prevent damage to the aileron due to airplane operation and pre-existing and undetected damage, which could result in failure of the aileron. Such failure could lead to reduced or loss of control of the airplane.

What Must I Do to Address This Problem?

(e) To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Visually inspect the left-hand (LH) and right-hand (RH) ailerons for damage (*i.e.*, distortion, bending, impact marks). Repair or replace any damaged aileron found.	Inspect within the next 50 hours time-in-service (TIS) after December 23, 2003 (the effective date of this AD), unless already accomplished. Repair or replace prior to further flight after the inspection.	In accordance with the applicable maintenance manual.
(2) Adjust the engine power lever actuated landing gear ''up'' aural warning microswitches and then perform a ground test. If deficiencies are detected during the ground test, make the necessary adjustments.	Within the next 50 hours time-in-service (TIS) after December 23, 2003 (the effective date of this AD), unless already accomplished.	In accordance with Nomad Alert Service Bulletin ANMD–57–18, dated December 19, 2002, and the applicable maintenance manual.
(3) For Model N22B airplanes: ..... (i) fabricate placards that incorporate the following words (using at least 1/18-inch letters) and install these placards on the instrument panel within the pilot's clear view: (A) ''RECOMMENDED APPROACH FLAPS 10 OR 20 DEG AT 90 KIAS''; (B) ''USE 10° OR 20° FLAP FOR TAKE-OFF AND LANDING—WARNING—DO NOT EXCEED 20° FLAP EXTENSION DURING FLIGHT, LANDING GEAR UP WARNING WILL INITIATE FOR A TORQUE PRESSURE OF LESS THAN 30 PSI''; and (ii) incorporate the following information into the limitation section of the Airplane Flight Manual (AFM): (A) limit the maximum flap extension to 20 degrees; and (B) limit flaps down operations for landing to 10° or 20° flap.	Within the next 50 hours time-in-service (TIS) after December 23, 2003 the effective date of this AD), unless already accomplished.	In accordance with Nomad Alert Service Bulletin ANMD–57–18, dated December 19, 2002. Accomplish the limitations of paragraphs (e)(3)(ii)(A) and (e)(3)(ii)(B) of this AD by inserting a copy of the AD into the Limitations Section of the flight manual. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish this flight manual insertion and the placard requirements of paragraph (e)(3)(i)(A) and (e)(3)(i)(B) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(4) For Model N24A airplanes: ..... (i) fabricate a placard that incorporates the following words (using at least 1/8-inch letters) and install this placard on the instrument panel within the pilot's clear view: ''USE 10° FLAP FOR TAKE-OFF and LANDING—WARNING—DO NOT EXCEED 10° FLAP EXTENSION DURING FLIGHT, LANDING GEAR UP WARNING WILL INITIATE FOR A TORQUE PRESSURE OF LESS THAN 30 PSI''; and (ii) incorporate the following information into the limitation section of the Airplane Flight Manual (AFM): (A) limit the maximum flap extension to 10 degrees; and (B) limit flaps down operations for landing to 10° flap.	Within the next 50 hours time-in-service (TIS) after December 23, 2003 (the effective date of this AD), unless already accomplished.	In accordance with Nomad Alert Service Bulletin ANMD–57–18, dated December 19, 2002. Accomplish the limitations of paragraphs (e)(4)(ii)(A) and (e)(4)(ii)(B) of this AD by inserting a copy of the AD into the Limitations Section of the flight manual. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish this flight manual insertion and the placard requirement of paragraph (e)(4)(i) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; facsimile (562) 627–5210.

Is There Material Incorporated by Reference?

(g) You must do the actions required by this AD per Nomad Alert Service Bulletin ANMD–57–18, dated December 19, 2002. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Is There Other Information That Relates to This Subject?

(h) Australian AD/GAF–N22/69, Amendment 4, dated February 27, 2003.

Issued in Kansas City, Missouri, on October 31, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–27921 Filed 11–12–03; 8:45 am]

BILLING CODE 4910–13–U

Proposed Rules

Federal Register
Vol. 68, No. 219
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 03–009–1]

Classical Swine Fever Status of Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for importing animals and animal products by adding Chile to the list of regions we recognize as free of classical swine fever (CSF). We are proposing this action at the request of the Government of Chile and after conducting a risk evaluation that indicates that Chile is free of this disease. We are also proposing to add Chile to a list of CSF-affected regions whose exports of live swine, pork, and pork products to the United States must meet certain certification requirements to ensure their freedom from CSF, and to amend those requirements to accommodate the addition of Chile to the list. These actions would relieve restrictions on the importation into the United States of pork, pork products, live swine, and swine semen from Chile while continuing to protect against the introduction of this disease into the United States.

DATES: We will consider all comments that we receive on or before January 12, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–009–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–009–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–009–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Charisse Cleare, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, classical swine fever (CSF), and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.9 of the regulations restricts the importation into the United States of pork and pork products from regions where CSF is known to exist. Section 94.10 of the regulations prohibits, with certain exceptions, the importation of swine that originate in or are shipped from or transit any region in which CSF is known to exist. Sections 94.9 and 94.10 provide that CSF exists in all regions of the world except for certain regions listed in those sections.

The Government of Chile requested that the Animal and Plant Health Inspection Service (APHIS) evaluate Chile's animal disease status with respect to CSF and provided information in support of that request in accordance with 9 CFR part 92, ''Importation of Animals and Animal Products: Procedures for Requesting Recognition of Regions.'' Using information submitted to us by the Government of Chile, as well as information gathered during a site visit by APHIS staff to Chile in 2002, we have reviewed and analyzed the animal health status of Chile with respect to CSF. Based on the information submitted to us and the information we gathered, we have concluded the following:

Risk Evaluation

Veterinary Infrastructure

Animal disease control and eradication programs in Chile operate under the authority of the Agricultural and Livestock Service (Servicio Agricola y Ganadero, SAG). SAG is organized into three levels: A central branch in Santiago, the capital of Chile; the regional organization, distributed across each of Chile's 13 regions; and an operative level within each region.

Animal health activities in Chile are conducted under the authority of the Animal Sanitation Law (DFLRRA No. 16, 1963). This law provides adequate authority for import controls, movement controls within Chile, animal quarantine, requiring reporting of animal diseases, disease control measures, seizure and depopulation, cleaning and disinfection, Chilean Federal government access to animals and premises, and enforcement of Chilean Federal laws and regulations.

Within SAG, the Livestock Protection Department (Departamento de Proteccion Pecuaria, DPP) manages animal health programs, including border port control, animal health laboratories, and animal quarantine centers. The DPP director serves as the chief veterinary officer of SAG.

Chile is divided from north to south into 13 regions identified as Regions I to XII and the Metropolitan Region (Region RM), which is located between Regions V and VI and includes Santiago. Regional directors are responsible for delivery of SAG programs within their regions. Each regional livestock veterinarian-in-charge reports to the Ministry of Agriculture's regional director and to the DPP headquarters. Animal health functions performed at

the regional level include animal health support to slaughter plants and facilities that store meat for export; management of the Program for Certification of Herds under Official Control (Planteles Bajo Control Oficial, PABCO); surveillance for swine, poultry, and ruminant diseases; disease eradication; and international port activity. Regions are subdivided into sections, of which there are a total of 62.

PABCO is a voluntary program managed by the Livestock Projects Sub-Department of DPP. However, only animals and animal products from livestock production facilities that operate under PABCO and comply with program standards are certified for export and interregional trade. The program is supervised by regional and section veterinary medical officers (VMOs) and is carried out by accredited veterinarians on the farms. The accredited veterinarians maintain records on animal production and health for each farm.

Slaughterhouses and processing plants used before export must also be approved and must operate under animal and public health inspection programs for diseases and residue monitoring. Sanitary controls (ante- and post-mortem) in slaughterhouses are directly supervised by the Ministry of Health. DPP section personnel working alongside Ministry of Health veterinarians manage quality controls for animal health and public health. Ministry of Health personnel are required to report any suspicious case of disease to the SAG section VMO, who must investigate within 24 hours of such a report.

Our evaluation indicated that animal health officials in Chile have the legal authority to enforce their Federal regulations regarding CSF and that the necessary veterinary infrastructure is in place to carry out CSF surveillance and control activities.

Disease History and Surveillance

The two most recent diagnoses of CSF in Chile occurred in May 1995 and July 1996. One of the premises that was affected in the May 1995 outbreak was the only premises found to be affected in the July 1996 outbreak. In the outbreaks, the affected premises were family farm operations that raised swine for self-consumption. All of the premises were located more than 1,000 kilometers from commercial swine production areas.

In 1995, SAG instituted sanitary controls to address the outbreak, including quarantine of the premises, slaughter of affected swine, ring vaccination of the remainder of each herd, and surveillance of the premises until November 1995. In response to the 1996 outbreak, SAG instituted quarantine and depopulation of all the swine, disinfection, and surveillance of the premises until December 1996.

In 1998, Chile conducted an enzyme-linked immunosorbent assay (ELISA) survey of 2,551 Chilean fattener swine for CSF and obtained negative results. The swine surveyed represented 7 of the 13 regions. The statistical plan considered a prevalence of 0.5 percent with a confidence level of 99 percent. From 2000 to 2001, ELISA testing was performed on swine from 321 family farms and from all 13 regions. The number of samples totaled 1,705. There was one positive result from an aged sow with no CSF clinical symptoms. The sow was from a previously affected area in Region II. This positive result was due to previous vaccination, as discussed below. For 2002, surveillance was performed using ELISA and immunofluorescence methods of detection. Tests were ordered due to monitoring activities and disease surveillance. All results were negative. Chile has also performed CSF surveillance at slaughterhouses nationwide.

CSF has never been detected in wild boar in Chile. Although the country does not have a surveillance program for wild boar, Chile has identified breeding operations whose swine originated from wild boar. Such operations are under official monitoring and control by the Department of Natural Resources (not SAG). Chile is conducting surveillance at these facilities because the animals were originally wild, even though they may have been in captivity for several generations.

By December 2002, SAG had tested 127 blood samples that were collected from 10 breeding operations with swine that originated from wild boar. Samples representing a 25 percent sampling (10 of 40 herds) were tested for CSF using ELISA and yielded negative results. However, as of December 2002, sampling had not been performed on free-ranging wild boar. SAG is designing a study to survey domestic swine that are located closest to the foothills of the areas where the wild boars reside.

There are few commercial swine operations in those regions of Chile where concentrations of wild boars are present; rather, family farms are usually prevalent in such regions. There is no evidence of CSF in the wild boar population and no evidence that domestic swine have contracted CSF from wild boars. Even if CSF was present in the wild boar population, it is unlikely that CSF would be transmitted from wild boar to commercial swine facilities because of the biosecurity measures in place at those facilities. In addition, the mountainous habitat of the wild boars and the areas of Chile devoted to domestic swine production are separated by forests, which the wild boars do not enter because there is no food for them in the forests.

Diagnostic Capabilities

The official diagnostic laboratory of SAG in Santiago does not isolate the causative agent for CSF because the biosecurity level of the laboratory is not sufficient to allow use of live CSF virus, which is necessary to confirm a diagnosis of CSF. Chile uses the Centro de Investigación en Sanidad Animal—Instituto Nacional de Investigación y Tecnologia Agraría y Alimentaria (Animal Health Research Center—National Institute for Food and Agriculture Technology and Research), which is located in Spain, as its reference laboratory when the presence of CSF virus must be confirmed. The turnaround time for results to be reported from Spain is 2 weeks.

In addition, SAG's official diagnostic laboratory accumulates samples to be tested for CSF with ELISA until it has 100 samples—enough to run an entire ELISA plate. As a result, the laboratory does not perform this test on samples as soon as they arrive.

APHIS does not consider the limitations of the laboratory a major risk factor because control procedures that would halt the spread of a possible CSF outbreak are in place. Chile has a document entitled ''Contingency Manual for Classical Swine Fever'' that prescribes response procedures when CSF is detected. In the event of a suspect CSF case, the official veterinarian of SAG would place the premises and animals under a prediagnostic quarantine until diagnostic results from SAG's official diagnostic laboratory are received. During the prediagnostic quarantine, necropsies would be performed and blood and organ samples would be taken for testing. SAG officials stated that its VMOs can make a preliminary diagnosis of CSF based on clinical evidence within 24 hours and that SAG has the legal authority to impose a quarantine based on this diagnosis, which provides sufficient precautions to contain the spread of CSF if it is present. The prediagnostic quarantine can prohibit the movement of susceptible animals from the premises to other farms, fairs, or slaughterhouses, except those with a high biosecurity level. If there are no clinical signs of

disease in other animals that have been placed under prediagnostic quarantine, those animals are moved to a municipal slaughterhouse, not an export slaughterhouse. These slaughterhouses have adequate veterinary inspection and biosecurity procedures.

The prediagnostic quarantine remains in place until the results of the preliminary diagnostic tests from SAG's official diagnostic laboratory are available. Chile indicates that the most probable time to detect clinical signs compatible with CSF, deliver samples to the domestic diagnostic laboratory, and confirm the clinical diagnosis with the preliminary tests would be 5 days, although this process could be accomplished in as little as 3 days. Samples are delivered to the laboratory on the same day they are collected from all areas of Chile. Trading partners would be alerted immediately after confirmation of CSF by SAG.

Vaccination Status

Vaccination for CSF has been prohibited in Chile since October 6, 1997. On certain farms, there are still some vaccinated sows that show positive antibody titers and false-positive results during surveillance activities.

Disease Status of Adjacent Regions

APHIS considers Peru, Bolivia, and Argentina to be affected with CSF. Peru had outbreaks of CSF in 2002, and continued to have outbreaks in 2003. The last CSF outbreaks in Argentina and Bolivia occurred in 1999; no subsequent cases of CSF had been identified in Argentina or Bolivia by the Office International des Epizooties (OIE) as of August 2003.

Degree of Separation From Adjacent Regions

Chile is separated from Peru by an area of desert and from Bolivia and Argentina by the Andes Mountains. On the west, Chile is bounded by the Pacific Ocean.

Movement Controls and Biological Security

Import Controls

Chile allows the importation of processed meat products, including raw processed or fresh raw delicatessen products, raw matured or acidified processed products, and long cure/maturation products. Long cure/maturation products are defined by SAG as hams that undergo salt curing and maturation for at least 8 months. Chile also imports processed cooked meat products and cooked sausages. The countries from which these products are exported to Chile must be officially pronounced free of African swine fever (ASF), bovine fever, CSF, foot-and-mouth disease (FMD), swine vesicular disease (SVD), and Teschen's disease by the OIE, as stated in SAG's resolution regarding the importation of these products. Countries that are not recognized as free of the listed diseases as a whole but that contain regions recognized by Chile as free of the listed diseases may only export products of long cure/maturation and processed cooked meat or cooked sausages. For these countries, the animals from which the meat products are derived must come from regions free of the diseases, as evaluated and recognized by SAG. In addition, the abattoir and processing plants in which the swine from which these products are derived are slaughtered and processed must be located in regions free of these diseases. Countries that cannot fulfill the listed requirements may only export processed cooked meat or cooked sausages to Chile. All of the above products must be accompanied by an official health certificate issued by the animal health protection organization of the government of the country of origin.

As noted, long cure/maturation products must undergo salt curing and maturation for at least 8 months to be eligible for importation into Chile. These products include Serrano ham, Spanish-style ham, Iberian ham, Parma ham, and others. Also, as noted above, these products may be imported into Chile from regions recognized by Chile as free of the listed diseases, even if the country in which the disease-free region is located is not recognized as disease-free as a whole by Chile, if the requirements previously stated are met.

However, Chile's requirement for the length of curing and maturation is not as long as APHIS'' for some of these products. At this time, APHIS considers Spain and certain regions in Italy to be affected with CSF. As a result, Iberian and Italian hams from affected regions must meet the requirements in § 94.17 to be eligible for importation into the United States. Section 94.17 requires, among other things, that Italian-type hams intended for export to the United States from CSF-affected regions be placed in a chamber for curing for a minimum of 314 days—substantially longer than Chile's 8-month requirement for Italian and Iberian hams. Iberian hams intended for export to the United States from CSF-affected regions must, under § 94.17, undergo a 365-day minimum curing process. The curing periods required by APHIS to prevent the introduction of CSF into the United States by long cure/maturation products from regions considered by the United States to be affected with CSF are thus longer than those required by Chile for the importation into Chile of such products from regions in a country considered by Chile to be affected with CSF. If Chile were to import long cure/maturation products from regions considered by the United States to be affected with CSF and then export those products to the United States, there would be a risk that CSF could be introduced into the United States via those products.

In addition to the requirements for long cure/maturation products, Chile has cooking requirements for processed cooked meat and cooked sausages intended for importation into Chile from regions recognized by Chile as free of the listed diseases if the country in which the disease-free region is located is not recognized as disease-free as a whole by Chile. The required cooking temperature is 68 oC for 30 minutes. With regard to the importation of these products into the United States, however, § 94.9 prescribes that pork and pork products from regions where CSF exists may be imported into the United States only if all bones were completely removed prior to cooking and the pork or pork product was heated by some method other than a flash-heating method to an internal temperature of 69 oC throughout. Thus, if Chile were to import processed cooked meat and cooked sausages from regions the United States considers to be affected with CSF and then export those products to the United States, there would be a risk that CSF could be introduced into the United States via those products.

Accordingly, we are proposing to require that Chilean pork and pork products imported into the United States be accompanied by certification regarding their origin. The certification would have to identify the exporting region and the region of origin of the pork or pork products as a region designated in §§ 94.9 and 94.10 as free of CSF at the time the pork or pork products were in the region. The certification would also have to state that:

- The pork or pork products were derived from swine that were born and raised in a region designated in §§ 94.9 and 94.10 as free of CSF and were slaughtered in such a region at a federally inspected slaughter plant that is under the direct supervision of a full-time salaried veterinarian of the national government of that region and that is eligible to have its products imported into the United States under the Federal Meat Inspection Act (21

U.S.C. 601 *et seq.*) and the regulations of the U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service in 9 CFR 327.2;

- The pork or pork products were derived from swine that have not lived in a region that is designated in § 94.9 or § 94.10 as affected with CSF;
- The pork or pork products have never been commingled with pork or pork products that have been in a region that is designated in §§ 94.9 and 94.10 as affected with CSF;
- The pork or pork products have not transited a region designated in §§ 94.9 and 94.10 as affected with CSF unless moved directly through the region to their destination in a sealed means of conveyance with the seal intact upon arrival at the point of destination; and
- If processed, the pork or pork product was processed in a region designated in §§ 94.9 and 94.10 as free of CSF in a federally inspected processing plant that is under the direct supervision of a full-time salaried veterinarian of the national government of that region.

Chile imports live swine primarily for use as breeding animals. Reports provided by the Government of Chile showed that live swine were imported in 1998 from France; in 1999 from Belgium and the United States; in 2000 from Canada, France, and the United States; and in 2001 until November 2002 from Canada. The number of shipments per year has ranged from 12 to 177.

Swine for importation into Chile must originate from regions pronounced free of ASF, bovine fever, CSF, SVD, Teschen's disease, and vesicular stomatitis by the OIE and must also be recognized by Chile as free of these diseases, as stated in SAG's resolution regarding the importation of live swine for reproduction. The region of origin must also be pronounced free of FMD without vaccination by OIE, as stated in SAG's resolution, and also be recognized as such by Chile. The farm of origin must, among other things, be free of brucellosis, tuberculosis, transmissible gastroenteritis, corona respiratory virus, swine epidemic diarrhea, and pseudorabies without vaccination. In addition, the animals must be accompanied by an official health certificate. Similar controls exist for the importation of porcine semen.

Live swine imported into Chile enter privately owned quarantine facilities. When operating, these facilities are under the supervision of the SAG section VMO. Private quarantine facilities must be authorized by SAG prior to use and must be inspected prior to each use. Site visit team members confirmed that the facilities consistently employ effective biological safeguards.

However, Chile has imported live swine from France. At this time, France is not recognized by the United States as CSF-free. Accordingly, we are proposing that swine exported from Chile must be accompanied by the following certification regarding the origin of the swine:

- The swine have not lived in a region designated in §§ 94.9 and 94.10 as affected with CSF;
- The swine have never been commingled with swine that have been in a region designated in §§ 94.9 and 94.10 as affected with CSF; and
- The swine have not transited a region designated in §§ 94.9 and 94.10 as affected with CSF unless moved directly through the region to their destination in a sealed means of conveyance with the seal intact upon arrival at the point of destination.

Export Controls

All physical inspection of meat destined for export from Chile takes place at export slaughter facilities. A public health veterinarian and a SAG veterinarian are present. The SAG veterinarian watches the meat being loaded and crated for export. Official SAG seals are placed on the crates by the SAG veterinarian. Shipments are also accompanied by sanitary health certificates. As noted earlier, export slaughter facilities only accept swine from farms participating in the PABCO program. Family farm swine are taken to municipal slaughter facilities or are slaughtered at the farm. Meat from swine slaughtered at these municipal facilities is for national consumption and not for export.

Swine for export are inspected by the SAG section VMO at the farm of origin when they are loaded on the truck. They cannot be inspected at the airport because there is not a containment area.

Movement Across Borders

There are 76 border control points in Chile: 13 airports, 24 seaports, and 39 land crossings.

Since 2001, all live swine imported into Chile have entered through the Santiago airport. Other commercial animal or animal product shipments entering the Santiago airport include semen, horses, vaccines, embryos, chicks, and fertile eggs. Almost no meat arrives through the Santiago airport.

Passengers arriving on commercial flights are asked to declare whether they are carrying plant or animal products. Amnesty bins are available throughout the airport to allow passengers to dispose of prohibited materials before they enter Customs. When fresh fruit or meat that is not processed according to specifications is discovered in the baggage of passengers arriving from areas that SAG considers to be high risk, the fruit or meat is confiscated and destroyed. SAG has two beagles in Santiago that are used to inspect baggage from high-risk commercial flights. At the time of the site visit, Santiago was the only international airport in Chile that used the beagles.

In addition to using beagles, passenger luggage from high-risk flights entering the Santiago airport is x-rayed before leaving the airport, using x-ray machines specifically designed to detect organic material. Passenger luggage is opened for inspection if agricultural products are suspected to be present. Not every airport has x-ray machines; at other airports, physical inspections of high-risk luggage are performed instead. (SAG considers fruits from Bolivia, Colombia, and Peru and fresh or inadequately processed meat from Argentina, Bolivia, the European Union, and Peru to be high-risk commodities.)

Food waste containing animal products from commercial flights is collected and heat treated until any CSF virus that might be present would be destroyed. This function is carried out by commercial enterprises. In Santiago, SAG representatives meet private planes and perform inspections.

Passenger traffic also arrives in Chile on cruise ships. Passengers are advised not to disembark with agricultural products. SAG operates a quarantine area near the ships to process disembarking passengers and inspect their luggage. Fruit or meat products that are confiscated are destroyed by SAG. Food wastes are prohibited from being offloaded from the ship and must be disposed of in the sea at least 12 miles from shore. Ships carrying fresh fruit are prohibited from discharging garbage at port.

At land border crossings, every car, bus, and truck is stopped. All cars are searched thoroughly by checking the passenger compartment, the trunk, under the seats, and the glove compartment. All luggage is opened and inspected by Customs and SAG personnel. All fruits, vegetables, meat, and honey found in cars and buses are confiscated and destroyed. Animals (*e.g.*, birds) without the appropriate supporting paperwork may also be confiscated. Inspection personnel reside on-site at the inspection stations.

Empty live-haul trucks, which are used to carry livestock, are allowed to move from Argentina and other potentially CSF-affected regions into Chile without thorough cleaning and

disinfection. Chile indicated that, in Region V (the region with the largest volume of traffic crossing the Argentine border), any empty vehicle that enters Chile and was used to transport cargo must be cleaned and washed. SAG inspectors verify the condition of the vehicle by visual inspection. If the cleanliness of the vehicle is not satisfactory to the inspectors, the vehicle is turned back. Similar controls are also applied at other land border crossings.

This practice concerns us in view of the role of contaminated live-haul trucks in the serious CSF outbreaks that occurred in the Netherlands in 1997–1998. This severe outbreak was initiated by an empty contaminated live-haul truck that transited from a CSF-affected area in Germany. In fact, the truck had been cleaned and disinfected, but the procedure was not adequate. Without adequate cleaning and disinfection, trucks could introduce CSF from affected regions.

Therefore, to address the risk presented by empty live-haul trucks that enter Chile from Argentina and other potentially CSF-affected regions without thorough cleaning and disinfection, we are proposing that any live swine exported to the United States from Chile would have to be accompanied by certification that the conveyance or materials used to transport the swine, if previously used for transporting swine, had first been cleaned and disinfected in accordance with 9 CFR 93.502. This certification requirement would be in addition to the certifications regarding the origin of live swine discussed previously under the heading ''Import Controls.''

Cargo from outside Chile is allowed to transit Chile to seaports such as Valparaiso or San Antonio for shipment to other countries. Currently, however, in-transit cargo must comply with all Chilean regulations, even if the ultimate destination is a different country. The team was informed that this policy may change in the future to accommodate in-transit shipping to the port of Valparaiso. This would require the use of in-bond sanitary and phytosanitary safeguarding procedures.

Livestock Demographics and Marketing Practices

In 1997, Chile had more than 1.7 million swine held by 105,665 swine producers. There were 289 commercial premises, which held 69 percent of all swine in Chile. Commercial swine populations are concentrated in Regions RM and VI. Family farm areas are mostly located in Regions VIII, IX, and X. At the time of the site visit, there were 100 commercial swine operations in Chile, many with multiple premises. Agrosuper is one of the largest commercial operations. While Agrosuper imports its own swine, most facilities purchase any imported swine they use from the Pig Improvement Company (PIC) in Chile. PIC has purchased swine from Belgium, France, and the United States. The number of small family farms has dramatically decreased in the last 5 years, due mostly to companies purchasing the land to plant fruit trees. Another factor in this decline is a law requiring that all swine be slaughtered at a slaughterhouse, rather than on the premises. The owners would have to pay for transportation to the slaughterhouse and for the slaughter of the swine. In addition, swine producers on family farms can no longer simply collect food waste to feed to the swine; processed feed or other feed must be purchased instead, increasing the cost of maintaining the swine.

There are currently no detailed data on the distribution of the population of wild boar known as javelins (*Sus scropha*). These animals moved into Chile sometime between 1975 and 1978 over the mountains from Argentina. They are mainly located in the southern part of the country, high in the mountains. Their range and the domestic swine production areas are separated by forests. The wild boar normally do not enter these forests because their food is not located there. There are no hunting restrictions for wild boars, and Chileans in the south hunt and eat them. As noted earlier, it is unknown whether the wild boar population is infected with CSF.

Because all swine operations that wish to participate in the interregional and international export markets must operate under the PABCO quality assurance program, the level of compliance with the national government's efforts to maintain Chile's CSF-free status is high.

Detection and Eradication of Disease

CSF has been effectively controlled in and eradicated from Chile in the past and is not known to exist in Chile at this time. The Government of Chile maintains a surveillance system capable of detecting CSF should the disease be reintroduced to the country. The Government of Chile has laws, policies, and infrastructure to detect, respond to, and eliminate any occurrence of CSF.

These findings are described in further detail in a qualitative evaluation that may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. The evaluation may also be viewed on the Internet at *http://www.aphis.usda.gov/vs/ncie/reg-request.html* by following the link for ''Information previously submitted by Regions requesting export approval and their supporting documentation'' and then clicking on the triangle beside ''Chile/Swine/Classical Swine Fever'' and selecting ''Response by APHIS.'' The evaluation documents the factors that have led us to conclude that Chile is free of CSF.

Therefore, we are proposing to recognize Chile as free of CSF and to add it to the lists in §§ 94.9 and 94.10 of regions where CSF is not known to exist. We are also proposing to revise § 94.24, which currently contains additional CSF-related certification requirements for four Mexican States that we consider to be free of CSF. Because the proposed certification requirements for Chile described previously in this document are essentially the same as the certification requirements for the four Mexican States presently named in § 94.24, apart from specific references to the national government of the region in question, we are proposing to add a list of regions to which the certification requirements in § 94.24 apply and to amend the certification requirements so that they refer generically to the national government of the region of export of the swine, pork, or pork products.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Under the regulations in 9 CFR part 94, the importation into the United States of live swine, pork, pork products, and swine semen that originates in or transits any region where CSF exists is generally prohibited, except for certain pork products processed in accordance with the regulations. Furthermore, even if a region is considered free of CSF, the importation of pork and pork products from that region may be restricted, depending on the region's proximity to or trading relationships with countries or regions where CSF exists. CSF is a transmissible animal disease with potentially serious consequences for international trade of animals and animal products.

The Agriculture and Livestock Service of the Government of Chile has asked APHIS to evaluate Chile's CSF status. APHIS conducted a site visit in Chile and, using data from this site visit and

data supplied by the Government of Chile, performed a subsequent risk evaluation that indicated that Chile is free of CSF. This proposed rule, therefore, would recognize Chile as free of CSF. However, since Chile shares borders with countries that the United States does not recognize as free of CSF, imports live swine from a country that the United States does not recognize as free of CSF, and imports certain products from countries affected with CSF under conditions that are less restrictive than those in our regulations in 9 CFR part 94, we are also proposing to add certification requirements for live swine, pork, and pork products imported into the United States from Chile to ensure their freedom from CSF.

As described above, in 1997, Chile had 105,665 swine farms on which 1.7 million swine were raised. There were 289 commercial premises, which represented 69 percent of Chile's hog facilities.[1] In the United States in 2000, on the other hand, there were 98,460 swine producers raising about 59,407,000 swine valued at $4.26 billion.[2] Chile has never exported live swine to the United States. In 1998, the United States imported from Chile 18 metric tons of frozen swine edible offal (Harmonized Tariff Schedule [HS] code number 020649). No other pork meat or any other pork product has been imported by the United States from Chile since then (table 1).

Frozen and dried pork accounts for 87 percent of all Chilean exports of pork and pork products; the remaining 13 percent consists of either fresh or chilled pork. In 2000, Chile exported 33,900 metric tons of pork. Of this, 30.1 metric tons was cooked pork, which was exported either frozen or dried (table 2). That same year, the United States imported 368,700 metric tons of pork, more than 10 times the total of Chile's pork exports.

On average, between 1998 and 2001, Chile's global exports of live swine amounted to approximately 0.3 percent of the volume of U.S. imports of live swine (tables 3 and 4). Specifically, Chile's global exports of live swine were 0.28 percent of the volume of U.S. imports of live swine in 1998, 0.33 percent in 1999, 0.39 percent in 2000, and 0.32 percent in 2001. Between 1998 and 2001, Chile's exports of pork and pork products to the world was, on average, equivalent to 9 percent of U.S. imports of pork and pork products.

TABLE 1.—U.S. IMPORTS OF PORK AND PORK PRODUCTS

Commodity (by HS 6-digit category)	Origin of U.S. imports	Import volume by year (in metric tons)			
		1998	1999	2000	2001
Swine carcasses, fresh or chilled (HS 020311)	World	10,555	11,206	4,542	1,676
Swine carcasses, frozen (HS 020321)	World	68	46	70	39
Swine hams, fresh or chilled (HS 020312)	World	48,976	61,099	76,469	75,482
Swine hams, with bone in (HS 020322)	World	10,023	7,977	5,533	4,470
Swine edible offal, fresh or chilled (HS 020630)	World	10,065	9,499	15,557	20,904
Swine edible offal, except for liver, frozen (HS 020649)	World (except Chile)	4,281	4,437	4,138	4,092
	Chile	18 (0.4%)	0	0	0
Swine livers, frozen (HS 020641)	World	248	98	29	264
Swine hams/shoulders, salted, dried (HS 021011)	World	818	1,555	1,659	1,280
Swine bellies, salted and dried, bacon (HS 021012)	World	10,073	16,673	21,720	19,836
Swine meat, except ham, salted, dried, smoked (HS 021019)	World	3,768	3,440	4,725	6,709
Swine fresh cuts (NES) (HS 020319)	World	87,434	116,325	148,401	163,131
Swine frozen cuts (NES) (HS 020329)	World	60,137	69,625	85,900	80,175
Total quantity		246,464	301,980	368,743	378,058

Source: USDA/Foreign Agricultural Service (FAS) Global Agricultural Trade System using data from the United Nations (UN) Statistical Office.
NES = not elsewhere specified.

TABLE 2.—CHILEAN EXPORTS OF PORK AND PORK PRODUCTS

Commodity (by HS 6-digit category)	Export volume by year (in metric tons)			
	1998	1999	2000	2001
Swine carcasses, fresh or chilled (HS 020311)	4,741	645	21	455
Swine carcasses, frozen (HS 020321)	108	80	6	164
Swine hams, fresh or chilled (HS 020312)	0	146	790	797
Swine hams, with bone in (HS 020322)	661	201	456	5,357
Swine edible offal, fresh or chilled (HS 020630)	3	5	104	103
Swine edible offal, except for liver, frozen (HS 020649)	4,888	5,331	5,677	7,261
Swine livers, frozen (HS 020641)	248	98	29	264
Swine bellies, salted & dried, bacon (HS 021012)	11	3	2	2
Swine fresh cuts (NES) (HS 020319)	0	865	2,638	2,448
Swine frozen cuts (NES) (HS 020329)	7,857	5,587	9,070	17,049
Total quantity	18,517	12,961	18,793	33,900

Source: FAS Global Agricultural Trade System using data from the UN Statistical Office.
NES = not elsewhere specified.

[1] APHIS, Veterinary Services/Trade in Animals and Animal Products Branch.

[2] USDA, ''Agricultural Statistics 2000,'' page VII–18. Washington, DC, National Agricultural Statistics Service, 2000.

TABLE 3.—U.S. IMPORTS OF LIVE SWINE

Swine (by HS 6-digit category)		1998	1999	2000	2001
Pure-bred (HS–010310)[1]	Quantity (swine)	415	594	4,585	22,178
	Value	$70,000	$182,000	$1,117,000	$5,080,000
Non-pure-bred category A (HS-010391)[2]	Quantity (metric tons)	20,383	29,978	2,336,048	42,276
	Value	$38,993,000	$51,200,000	$72,285,000	$103,168,000
Non-pure-bred category B (HS–010392)[3]	Quantity (metric tons)	318,246	259,024	2,016,931	280,621
	Value	$249,787,000	$175,100,000	$217,977,000	$249,754,000
Total value		$288,850,000	$226,482,000	$291,379,000	$358,002,000

[1] Imported from Canada, Denmark, and United Kingdom.
[2] Imported from Canada, Denmark, and Australia.
[3] Imported from Canada, Denmark, Norway, Australia, and United Kingdom.
Source: FAS Global Agricultural Trade System using data from the UN Statistical Office.

TABLE 4.—CHILEAN EXPORTS OF LIVE SWINE

Swine (by HS 6-digit category)		1998	1999	2000	2001
Pure-bred (HS–010310)	Quantity (metric tons)	95	unknown	unknown	unknown
	Value	$759,000	$688,000	$1,126,000	$1,132,000
Non-pure-bred category A (HS–010391)	Quantity (metric tons)	0	unknown	0	0
	Value	0	$25,000	0	0
Non-pure-bred category B (HS–010392)	Quantity (metric tons)	30	unknown	0	0
	Value	$44,000	$45,000	0	0
Total value		$803,000	$758,000	$1,126,000	$1,132,000

Source: FAS Global Agricultural Trade System using data from the UN Statistical Office.

Economic Effects on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. Domestic swine producers and processors of pork and pork products, as well as brokers, agents and others in the United States who would become involved in any future importation and sale of swine, pork, and pork products from Chile, are most likely to be directly affected by the proposed change to Chile's CSF status. The number and size of the entities that might become involved in any future importation and sale of swine (or products) from Chile is unknown. However, it is reasonable to assume that most would be small, based on the Small Business Administration's standards, since most businesses are classified as small under those standards.

From an economic standpoint, the proposed change in Chile's CSF status should have little or no effect on domestic entities in the United States. This is because exports from Chile in quantities sufficient to have a significant effect on the U.S. market are unlikely. We do not anticipate that any U.S. entities, small or otherwise, will experience any significant economic effects as a result of this action.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 03–009–1. Please send a copy of your comments to: (1) Docket No. 03–009–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would recognize Chile as free of CSF and add certification requirements for live swine, pork, and pork products imported into the United States from Chile to ensure their freedom from CSF.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information

is estimated to average 1 hour per response.

Respondents: Full-time, salaried veterinary officers, employed by the Government of Chile, who will be completing the certificates necessary to export swine, pork, and pork products to the United States.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 25.

Estimated total annual burden on respondents: 25 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.9 [Amended]

2. In § 94.9, paragraph (a) would be amended by adding the word ''Chile;'' after the word ''Canada;''.

§ 94.10 [Amended]

3. In § 94.10, paragraph (a) would be amended by adding the word ''Chile;'' after the word ''Canada;''.

4. Section 94.24 would be revised to read as follows.

§ 94.24 Restrictions on the importation of live swine, pork, or pork products from certain regions free of classical swine fever.

The regions listed in paragraph (a) of this section are recognized as free of classical swine fever (CSF) in §§ 94.9(a) and 94.10(a) but supplement their pork supplies with fresh (chilled or frozen) pork imported from regions considered to be affected by CSF, supplement their pork supplies with pork from CSF-affected regions that is not processed in accordance with the requirements of this part, share a common land border with CSF-affected regions, or import live swine from CSF-affected regions under conditions less restrictive than would be acceptable for importation into the United States. Thus, there exists a possibility that live swine, pork, or pork products from the CSF-free regions listed in paragraph (a) of this section may be commingled with live swine, pork, or pork products from CSF-affected regions, resulting in a risk of CSF introduction into the United States. Therefore, live swine, pork, or pork products and shipstores, airplane meals, and baggage containing pork or pork products, other than those articles regulated under parts 95 or 96 of this chapter, may not be imported into the United States from a region listed in paragraph (a) of this section unless the requirements in this section, in addition to other applicable requirements of part 93 of this chapter and part 327 of this title, are met.

(a) Regions subject to the requirements of this section: Chile and the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa.

(b) *Live swine.* The swine must be accompanied by a certification issued by a full-time salaried veterinary officer of the national government of the region of export. Upon arrival of the swine in the United States, the certification must be presented to an authorized inspector at the port of arrival. The certification must identify both the exporting region and the region of origin as a region designated in §§ 94.9 and 94.10 as free of CSF at the time the swine were in the region and must state that:

(1) The swine have not lived in a region designated in §§ 94.9 and 94.10 as affected with CSF.

(2) The swine have never been commingled with swine that have been in a region that is designated in §§ 94.9 and 94.10 as affected with CSF;

(3) The swine have not transited a region designated in §§ 94.9 and 94.10 as affected with CSF unless moved directly through the region to their destination in a sealed means of conveyance with the seal intact upon arrival at the point of destination; and

(4) The conveyances or materials used in transporting the swine, if previously used for transporting swine, have been cleaned and disinfected in accordance with the requirements of § 93.502 of this chapter.

(c) *Pork or pork products.* The pork or pork products must be accompanied by a certification issued by a full-time salaried veterinary officer of the national government of the region of export. Upon arrival of the pork or pork products in the United States, the certification must be presented to an authorized inspector at the port of arrival. The certification must identify both the exporting region and the region of origin of the pork or pork products as a region designated in §§ 94.9 and 94.10 as free of CSF at the time the pork or pork products were in the region and must state that:

(1) The pork or pork products were derived from swine that were born and raised in a region designated in §§ 94.9 and 94.10 as free of CSF and were slaughtered in such a region at a federally inspected slaughter plant that is under the direct supervision of a full-time salaried veterinarian of the national government of that region and that is eligible to have its products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the regulations in § 327.2 of this title;

(2) The pork or pork products were derived from swine that have not lived in a region designated in §§ 94.9 and 94.10 as affected with CSF;

(3) The pork or pork products have never been commingled with pork or pork products that have been in a region that is designated in §§ 94.9 and 94.10 as affected with CSF;

(4) The pork or pork products have not transited through a region designated in §§ 94.9 and 94.10 as affected with CSF unless moved directly through the region to their destination in a sealed means of conveyance with the seal intact upon arrival at the point of destination; and

(5) If processed, the pork or pork products were processed in a region designated in §§ 94.9 and 94.10 as free of CSF in a federally inspected processing plant that is under the direct supervision of a full-time salaried veterinary official of the national

government of that region. (Approved by the Office of Management and Budget under control number 0579–0230)

Done in Washington, DC, this 6th day of November 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–28389 Filed 11–12–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–185–AD]

RIN 2120–AA64

Airworthiness Directives; Hamburger Flugzeugbau G.m.b.H. Model HFB 320 HANSA Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Hamburger Flugzeugbau G.m.b.H. Model HFB 320 HANSA airplanes. This proposal would require replacement of the elevator trim control cable assemblies with new assemblies. This action is necessary to prevent loss of elevator trim and possible loss of rudder and/or elevator function due to stress-corrosion cracking of certain cable terminals. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 15, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–185–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–185–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Deutschland G.m.b.H., Customer Service HFB 320, Mr. Dieter Mewes, Postfach 95 01 09, D–21111 Hamburg, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

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

Submit comments using the following format:

• *Organize comments issue-by-issue.* For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–185–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–185–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Hamburger Flugzeugbau G.m.b.H. Model HFB 320 HANSA airplanes. The LBA advises that there is the possibility of stress-corrosion cracking on MS 21260 flight control cable terminals. This condition, if not corrected, could result in loss of elevator trim and possible loss of rudder and/or elevator function.

Explanation of Relevant Service Information

The manufacturer has issued HFB 320 Hansa Service Bulletin 27–75, dated May 31, 2002, which describes procedures for replacement of the elevator trim control cable assemblies with new assemblies. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued LBA airworthiness directive 2002–157, dated July 11, 2002, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours to accomplish the proposed replacement, and that the average labor rate is $65 per work hour. Required parts would cost approximately $500 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $10,800, or $1,800 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Hamburger Flugzeugbau G.M.B.H.: Docket 2002–NM–185–AD.

Applicability: Model HFB 320 HANSA airplanes, serial numbers 1023, 1027, 1030, 1032, 1033, 1035 through 1043 inclusive, 1045 through 1047 inclusive, 1050 through 1055 inclusive, 1057 through 1062 inclusive, 1064, and 1065; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of elevator trim and possible loss of rudder and/or elevator function due to stress-corrosion cracking of certain cable terminals, accomplish the following:

Replacement

(a) Within 30 flight cycles or 2 months from the effective date of this AD, whichever occurs first, replace the elevator trim control cable assemblies with new assemblies in accordance with the Accomplishment Instructions of HFB 320 Hansa Service Bulletin 27–75, dated May 31, 2002.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in German airworthiness directive 2002–157, dated May 31, 2002.

Issued in Renton, Washington, on November 6, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28402 Filed 11–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–366–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 31, 31A, 35, 35A (C–21A), 36, and 36A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Learjet Model 31, 31A, 35, 35A (C–21A), 36, and 36A airplanes. This proposal would require modification of the drag angles of the fuselage and engine pylons to gain access to the shear webs of the forward engine beams; repetitive inspections of the shear webs of the forward engine beams for cracks; follow-on actions; and modification/repair of the shear webs of the forward engine beams, as necessary, which would terminate the repetitive inspections. This action is necessary to prevent significant structural damage to the engine pylons, possible separation of the engines from the fuselage, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–366–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–366–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Steven Litke, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4127; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–366–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–366–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that cracks in the shear webs of the forward engine beams were discovered on certain Learjet Model 31, 31A, 35, 35A (C–21A), 36, and 36A airplanes, which experienced damage while landing. Further investigation revealed that the cracks were caused by repetitive loading of the engine beams during airplane operation (*i.e.*, flight, maneuver, taxi, and landing). The engine beams are the primary structural elements of the pylon support for each engine. Such cracking, if not corrected, could result in significant structural damage to the engine pylons, possible separation of the engines from the fuselage, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Bombardier Service Bulletin 31–51–2 (for Model 31 airplanes) and Bombardier Service Bulletin 35/36–51–3 (for Model 35 and 36 airplanes); both dated February 1, 2001. These service bulletins include procedures for modifying the drag angles of the fuselage and engine pylons to gain access to the shear webs of the forward engine beams. The modification includes including removing the upper forward drag angles, trimming the slots in the fuselage and pylon skins, creating slots in the drag angles to match slots in the fuselage and pylon skins, grit blasting the radius of the engine shear webs, re-identifying the drag angles, installing new nutplates on the pylon skins, re-installing the upper forward drag angles, fillet sealing the drag angles to the fuselage and engine pylon skins, installing covers on the drag angles, fay surfacing the covers to the drag angles, and fillet sealing the cover edges.

The service bulletins also include procedures for repetitive detailed inspections (using a probe) and general visual inspections of the shear webs of the forward engine beams for cracking. The probe inspection includes grit blasting areas of the shear webs of the forward engine beams, calibrating a micro-ohmmeter, attaching a test probe to the micro-ohmmeter, applying the test probe to the base of the forward and aft shear webs, applying the test probe to the radius of the forward and aft shear webs, inspecting the forward and aft shear webs for visible cracks, applying primer to the grit blasted areas of the shear webs of the forward engine beam, and determining if the resistance values of the probe inspection are within the acceptable limits specified in the service bulletins.

We have also reviewed and approved Bombardier Service Bulletin 31–51–3, Revision 1 (for Model 31 airplanes) and Bombardier Service Bulletin 35/36–51–4, Revision 1 (for Model 35 and 36 airplanes), both dated August 2, 2001. These service bulletins describe procedures for modifying/repairing the shear webs of the forward engine beams. The modification/repair procedures include trimming the upper and lower flanges of frame 24, measuring the lengths and dimensions of existing cracks in the shear webs of the forward engine beams and reporting the results to the manufacturer, installing the appropriate parts kits, fabricating certain parts, and installing new hardware and a jumper on the conduit located between stringers 6 and 7 on the left side of the airplane. Modification/repair of the shear webs eliminates the need for the repetitive detailed inspections (using a probe) and general visual inspections of the shear webs of the forward engine beams for cracking.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed under ''Differences Between the Proposed Rule and the Service Bulletins.''

Flight With Cracks

Operators should note that, while it is not the FAA's normal policy to allow flight with known cracks, this proposed AD does permit further flight with cracking within certain limits. If the crack size limits are strictly observed and if repetitive inspections are performed at the required intervals, cracks that grow beyond the limits will be detected, and corrective action taken, before they can grow to a size that would create an unacceptable risk of structural failure.

This proposed AD allows flight with crack openings less than 0.03 inch, provided that (1) the crack is not part of multi-site damage, (2) the crack growth is easily detectable, and (3) the established inspection procedures would detect cracked structure at intervals that would permit repairs to be accomplished before the structure's strength falls below ultimate load carrying capability.

Differences Between the Proposed Rule and the Service Bulletins

Although the service bulletins either do not reference repair instructions or specify that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions per a method approved by the FAA.

The service bulletins also specify to submit information to the manufacturer; however, this proposed AD does not include such a requirement.

Clarification of Compliance Times

The follow-on actions and compliance times for the general visual inspection required by paragraph (a) of this AD are not clearly stated in the service bulletins. We have specified the compliance time and follow-on actions in paragraph (d) of this proposed AD.

Cost Impact

There are approximately 893 airplanes of the affected design in the worldwide fleet. The FAA estimates that 673 airplanes of U.S. registry would be affected by this proposed AD.

It would take between 2 and 3 work hours per airplane to accomplish the proposed modification, at an average labor rate of $65 per work hour. Required parts would cost approximately $243 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be between $251,029 and $294,774, or between $373 and $438 per airplane.

We estimate that it would take 3 work hours to perform the proposed inspection, and that the average labor rate is $65 per work hour. Based on this figure, the cost impact of the proposed inspections on U.S. operators is estimated to be $131,235, or $195 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Learjet: Docket 2001–NM–366–AD.

Applicability: The following airplanes, certificated in any category, as applicable:

TABLE 1.—APPLICABILITY

Model	As listed in Bombardier service bulletin
31 and 31A Airplanes	31–51–2, dated February 1, 2001; and 31–51–3, Revision 1, dated August 2, 2001.
35, 35A (C–21A), 36 and 36A Airplanes.	35/36–51–3, dated February 1, 2001; and 35/36–51–4, Revision 1, dated August 2, 2001.

Compliance: Required as indicated, unless accomplished previously.

To prevent significant structural damage to the engine pylons, possible separation of the engines from the fuselage, and consequent reduced controllability of the airplane, accomplish the following:

Inspections

(a) At the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD: Do a detailed inspection (using a probe) and a general visual inspection of the shear webs of the forward engine beams (including modification of the drag angles) for cracking in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 31–51–2 (for Model 31 airplanes) or 35/36–51–3 (for Model 35 and 36 airplanes), both dated February 1, 2001; as applicable.

(1) Prior to the accumulation of 3,000 total flight hours; or

(2) Within 1,200 flight hours or 1 year after the effective date of this AD, whichever occurs first.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 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.''

Detailed Probe Inspection Follow-on Actions

(b) Following the detailed probe inspection required by paragraph (a) of this AD, do the follow-on actions specified in paragraphs (b)(1), (b)(2), or (b)(3) of this AD, as

applicable, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 31–51–2 or 35/36–51–3, both dated February 1, 2001; as applicable.

(1) If the resistance measured during the inspection is less than 0.110 milliohm: Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 1,200 flight hours.

(2) If the resistance measured during the inspection is 0.110 milliohm or more, but less than 0.150 milliohm: Within the next 1,200 flight hours, repair and modify the forward engine beam shear web in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 31–51–3, Revision 1 (for Model 31 airplanes) or 35/36–51–4, Revision 1 (for Model 35 and 36 airplanes), both dated August 2, 2001; as applicable.

(3) If the resistance measured during the inspection is 0.150 milliohm or more: Before further flight, repair and modify the forward engine beam shear web in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 31–51–3, Revision 1, or 35/36–51–4, Revision 1; as applicable.

General Visual Inspection Follow-On Actions

(c) Following the general visual inspection required by paragraph (a) of this AD, do all of the applicable follow-on actions at the times specified in the Accomplishment Instructions of Bombardier Service Bulletin 31–51–2 or 35/36–51–3, both dated February 1, 2001; as applicable; except as specified in paragraph (d) of this AD.

(d) If any crack opening is found that is more than 0.03 inch during the general visual inspection required by paragraph (a) of this AD: Before further flight, do the actions specified in paragraphs 2.C.(16)(a) and 2.C.(16)(b) of Bombardier Service Bulletin 31–51–2 or 35/36–51–3, both dated February 1, 2001; as applicable; repair per a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA; and do the terminating action specified in paragraph (e) of this AD.

Terminating Action

(e) Modification of the shear webs by accomplishing all of the actions specified in the Accomplishment Instructions of Bombardier Service Bulletin 31–51–3, Revision 1, or 35/36–51–4, Revision 1, both dated August 2, 2001; as applicable; terminates the initial inspections required by paragraph (a) and the repetitive inspections required by paragraph (b)(1) of this AD.

Repair Approval

(f) Where any service bulletin identified in this AD specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair per a method approved by the Manager, Wichita ACO, FAA.

Submission of Inspection Results Not Required

(g) Although the service bulletins identified in this AD specify to submit information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(h) In accordance with 14 CFR 39.19, the Manager, Wichita ACO, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on November 6, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28399 Filed 11–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–231–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 and 900EX, and Dassault Model Mystere-Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 2000 and 900EX, and Dassault Model Mystere-Falcon 900 series airplanes. This proposal would require measuring the paint thickness on the upper and lower surfaces of the left and right sides of the horizontal stabilizer, performing corrective actions if necessary, and installing maintenance caution placards on the upper surface of the left and right sides of the horizontal stabilizer. This action is necessary to prevent structural damage to the horizontal stabilizer after a direct lightning strike, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 15, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002-NM–231-AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped

postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–231–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Falcon 2000 and 900EX, and Dassault Model Mystere-Falcon 900 series airplanes. The DGAC advises that, during lightning testing on a composite horizontal stabilizer, it was discovered that excessive paint thickness has a detrimental effect on the lightning protection of the stabilizer structure. Such paint thickness impairs lightning propagation, which may lead to significant structural damage to the stabilizer after a direct lightning strike, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dassault has issued Service Bulletins F900–291 (for Model Mystere-Falcon 900 series airplanes), F900EX–155 (for Model Falcon 900EX series airplanes), and F2000–234 (for Model Falcon 2000 series airplanes); all dated February 20, 2002. These service bulletins describe procedures for measuring the paint thickness on the upper and lower surfaces of the left and right sides of the horizontal stabilizer, and corrective actions if necessary. The procedures for determining the paint thickness include spot-sanding three different locations on the upper and lower surfaces of the left and right sides of the horizontal stabilizer, and using a dial indicator (or other equivalent means) to measure the thickness of the removed paint. The corrective actions include sanding and repainting areas where the paint is thicker than the limits specified in the applicable service bulletin. The service bulletins also describe procedures for installing maintenance caution placards on the upper surface of the left and right sides of the horizontal stabilizer.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2002–089(B), dated March 2, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between the Proposed Rule and the Service Bulletins

Although the Accomplishment Instructions of the service bulletins specify to submit a service bulletin compliance form, this proposed AD does not require that action.

Cost Impact

The FAA estimates that 29 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 16 work hours per airplane, at an average labor rate of $65 per work hour, to measure the paint thickness. Based on these figures, the cost impact for the proposed measurement of the paint thickness on U.S. operators is estimated to be $30,160, or $1,040 per airplane.

It would take approximately 3 work hours per airplane, at an average labor rate of $65 per work hour, to install the placards. Required parts would be provided to operators at no cost. Based on these figures, the cost impact for the proposed installation of the placards on U.S. operators is estimated to be $5,655, or $195 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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 proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket 2002–NM–231–AD.

Applicability: Model Mystere-Falcon 900 series airplanes, as listed in Dassault Service

Bulletin F900–291, dated February 20, 2002; Model Falcon 900EX series airplanes, as listed in Dassault Service Bulletin F900EX–155, dated February 20, 2002; and Model Falcon 2000 series airplanes, as listed in Dassault Service Bulletin F2000–234, dated February 20, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural damage to the horizontal stabilizer after a direct lightning strike, which could result in reduced controllability of the airplane, accomplish the following:

Measurement of Paint Thickness and Corrective Actions

(a) Within 7 months after the effective date of this AD: Measure the thickness of the paint on the upper and lower surfaces of the left and right sides of the horizontal stabilizer in accordance with all of the actions specified in paragraphs 2.A. through 2.D. of the Accomplishment Instructions of Dassault Service Bulletin F900–291, dated February 20, 2002; Dassault Service Bulletin F900EX–155, dated February 20, 2002; or Dassault Service Bulletin F2000–234, dated February 20, 2002; as applicable. Any necessary corrective action must be done before further flight in accordance with the applicable service bulletin.

Installation of Placards

(b) After accomplishing the actions required by paragraph (a) of this AD, before further flight, install placards on the upper surface of the left and right sides of the horizontal stabilizer in accordance with paragraph 2.E. of the Accomplishment Instructions of Dassault Service Bulletin F900–291, dated February 20, 2002; Dassault Service Bulletin F900EX–155, dated February 20, 2002; or Dassault Service Bulletin F2000–234, dated February 20, 2002; as applicable.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–089(B), dated March 2, 2002.

Issued in Renton, Washington, on November 6, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28400 Filed 11–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. This proposal would require one-time inspections of the inner webs and flanges at frames 15, 18, 41, and 43 for evidence of corrosion or cracking, and corrective actions if necessary. This action is necessary to detect and correct corrosion and cracking of the inner webs and flanges at frames 15, 18, 41, and 43, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 15, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–144–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–144 AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. The CAA advises that cracking has been discovered at the inner webs and flanges at frame 18. Investigation revealed that the cracking is caused by ingress of moisture leading to corrosion, followed by subsequent cracking. Such cracking, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin ISB.53–165, dated December 11, 2001, which describes procedures for detailed visual inspections of frames 15, 18, 41, and 43 for evidence of corrosion or cracking. If corrosion or cracking is found, the corrective actions include blending to limits specified in the service bulletin and reprotecting all base metals. If corrosion or cracking exceeds the acceptable limits specified in the service bulletin, operators are instructed to contact the manufacturer. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 004–12–2001 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions per a method approved by the FAA or CAA (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the CAA (or its delegated agent) would be acceptable for compliance with this proposed AD.

The service bulletin specifies to submit information to the manufacturer; however, this proposed AD does not include such a requirement.

The service bulletin also specifies compliance time in terms of ''years of age'' and ''time period from first flight'' of the airplane; relative to the effective date of the service bulletin. Paragraph (b) of this proposed AD specifies the inspection thresholds in terms of years after the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever is earlier; and relative to the effective date of the proposed AD. This decision is based on our determination that ''years of age'' and ''time period from first flight'' may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry, and records will always exist that establish these dates with certainty.

Cost Impact

The FAA estimates that 55 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $35,750, or $650 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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 proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2002–NM–144–AD.

Applicability: Model BAE 146 and Avro 146–RJ series airplanes, certificated in any category; except those airplanes on which either BAe Modification HCM30514A or HCM30514C, and either HCM30514B or HCM30514D, have been accomplished.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion and cracking of the inner webs and flanges at frames 15, 18, 41, and 43, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspection

(a) Except as provided by paragraph (c) of this AD: Do a detailed inspection of frames 15, 18, 41, and 43 (including any applicable repair) by accomplishing all actions specified in the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin ISB.53–165, dated December 11, 2001. Do the inspection at the applicable time specified in paragraph (b) of this AD.

Note 1: 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.''

Compliance Times

(b) Do the inspection required by paragraph (a) of this AD at the applicable time specified in paragraph D., ''Compliance,'' of the service bulletin, except where the service bulletin specifies ''time period from first flight'' or ''years of age,'' this AD establishes the thresholds in terms of years after the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever is earlier. Where the service bulletin specifies compliance times relative to the date of the service bulletin, this AD requires compliance times relative to the effective date of this AD.

Corrective Actions

(c) If any discrepancy is found during any inspection required by paragraph (a) of this AD, before further flight, accomplish the applicable repair in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin ISB.53–165, dated December 11, 2001. If the service bulletin specifies to contact the manufacturer for appropriate action, before further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

Submission of Inspection Results Not Required

(d) Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in British airworthiness directive 004–12–2001.

Issued in Renton, Washington, on November 6, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28401 Filed 11–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–40–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 206, P206, U206, TP206, TU206, 207, T207, 210, T210, 336, 337, and T337 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 86–26–04, which applies to certain Cessna Aircraft Company (Cessna) 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 205, 205A, 206, P206, P206E, TP206A, TU206, TU206E, U206, U206E, 207, T207, 210, T210, 336, 337, and T337 series airplanes. AD 86–26–04 currently requires you to inspect and, if necessary, modify the pilot/co-pilot upper shoulder harness adjusters that have certain Cessna accessory kits incorporated. This proposed AD is the result of reports that additional airplanes have the same unsafe condition and the manufacturer revised the service information to add these airplanes and correct the part number of the shoulder harness adjusters. Consequently, this proposed AD would retain the actions of AD 86–26–04, add additional airplanes to the applicability section of this proposed AD, and propose using the revised service information. We are issuing this proposed AD to prevent slippage of the pilot/co-pilot shoulder harness, which could result in failure of the shoulder harness to maintain proper belt length adjustment and tension. This failure could result in pilot/co-pilot injury.

DATES: We must receive any comments on this proposed AD by January 12, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–40–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Cessna Aircraft Company, Product Support P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4123; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2003–CE–40–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the

closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

Has FAA taken any action to this point? Cessna designed add-on shoulder harness assembly accessory kits for the pilot/co-pilot seats for certain Cessna airplanes. These shoulder harness assemblies incorporate a retainer spring in the adjuster on the upper and lower shoulder harness. The retainer spring may have been inadvertently installed on the belt friction pin. This installation of the spring in the upper shoulder harness adjuster will not allow the belt webbing to lock in place.

This caused us to issue AD 86–26–04, Amendment 39–5503 (52 FR 520, January 7, 1987). AD 86–26–04 currently requires the following on certain Cessna 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 205, 205A, 206, P206, P206E, TP206A, TU206, TU206E, U206, U206E, 207, T207, 210, T210, 336, 337, and T337 series airplanes:

- Inspecting the upper shoulder harness adjuster for the presence of a retainer spring;
- If retainer spring is found, removing the retainer spring; and
- Stamping out the –401 identification number.

What has happened since AD 86–26–04 to initiate this proposed action? We have received reports that additional airplanes have the same unsafe condition. Cessna has revised the related service information to include these additional airplanes.

Cessna has also revised the related service information to correct the reference to the part number (P/N) of the shoulder harness adjusters. The P/N referenced is referenced as 44030–401 in Cessna Single Engine Service Bulletin SEB86–8 and Cessna Multi-engine Service Bulletin MEB86–22, both dated November 21, 1986. The correct P/N is 443030–401.

What are the consequences if the condition is not corrected? If not corrected, the shoulder harness could fail to maintain proper belt length adjustment and tension. This failure could result in pilot/co-pilot injury.

Is there service information that applies to this subject? Cessna has issued Single Engine Service Bulletin SEB86–8, Revision 1, and Cessna Multi-engine Service Bulletin MEB86–22, Revision 1, both dated July 28, 2003.

What are the provisions of this service information? These service bulletins include procedures for:

- Inspecting the upper shoulder harness adjuster for the presence of a retainer spring;
- If retainer spring is found, removing the retainer spring; and
- Stamping out the –401 identification number.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing AD action.

What would this proposed AD require? This proposed AD would supersede AD 86–26–04 with a new AD that would incorporate the actions in the previously-referenced service bulletin. This proposed AD would apply to certain Cessna Models 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 206, P206, U206, TP206, TU206, 207, T207, 210, T210, 336, 337, and T337 series airplanes.

Are there differences between the service information and this AD? Yes. The service information requires removal of the retainer springs on both the upper and lower adjuster. However, this AD only addresses the upper shoulder harness adjuster.

The installation of the springs in the lower adjuster does not constitute an unsafe condition. Therefore, we are not proposing a requirement to remove the spring from the lower adjuster.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 75,329 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	No parts required	$65	$65 × 75,329 = $4,896,385.

We estimate the following costs to accomplish any necessary modification that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this modification:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $65 per hour = $65	No parts required	$65

What is the difference between the cost impact of this proposed AD and the cost impact of AD 86–26–04? The difference is the addition of 26 airplanes to the applicability section of this proposed AD. There is no difference in cost to perform the proposed inspection and the proposed modification.

Regulatory Findings

Would this proposed AD impact various entities? We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. 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.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–CE–40–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 86–26–04, Amendment 39–5503 (52 FR 520, January 7, 1987), and by adding a new AD to read as follows:

Cessna Aircraft Company: Docket No. 2003–CE–40–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by January 12, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 86–26–04, Amendment 39–5503.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category and incorporate one of the Cessna accessory kits specified in paragraph (d) of this AD.

Model	Serial No.
(1) 120	8000 through 15075
(2) 140	8000 through 15075
(3) 140A	15200 through 15724
(4) 150	617, 17001 through 17999, and 59001 through 59018
(5) 150A	628 and 15059019 through 15059350
(6) 150B	15059351 through 15059700
(7) 150C	15059701 through 15060087
(8) 150D	15060088 through 15060772
(9) 150E	644 and 15060773 through 15061532
(10) 150F	15061533 through 15064532
(11) 150G	15064533 through 15064969 and 15064971 through 15067198
(12) 150H	649 and 15067199 through 15069308
(13) 150J	15069309 through 15071128
(14) 150K	15071129 through 15072003
(15) 170	18000 through 18729
(16) 170A	18730 through 19400 and 19402 through 20266
(17) 170B	20267 through 20999 and 25000 through 27169
(18) 172	610, 612, 615, 28000 through 29999, 36000 through 36999, and 46001 through 46754
(19) 172A	622, 625, and 46755 through 47746
(20) 172B	630 and 17247747 through 17248734
(21) 172C	17248735 through 17249544
(22) 172D	17249545 through 17250572
(23) 172E	639 and 17250573 through 17251822
(24) 172F	17251823 through 17253392
(25) 172G	17253393 through 17254892
(26) 172H	638, 17254893 through 17256492, and 17256494 through 17256512
(27) 172I	17256513 through 17257161
(28) 172K	17257162 through 17258486 and 17258487 through 17259223
(29) P172D	P17257120 through P17257188
(30) 175	626, 640, 28700A, and 55001 through 56238
(31) 175A	619 and 56239 through 56777
(32) 175B	17556778 through 17557002
(33) 175C	17557003 through 17557119
(34) 177	661, 17700001, and 17700003 through 17701164
(35) 177A	17701165 through 17701370
(36) 177B	17701371 through 17701471 and 17701473 through 17701530
(37) 180	604, 614, 30000 through 32661
(38) 180A	32662 through 32999 and 50001 through 50355
(39) 180B	50356 through 50661
(40) 180C	624 and 50662 through 50911
(41) 180D	18050912 through 18051063
(42) 180E	18051064 through 18051183
(43) 180F	18051184 through 18051312
(44) 180G	18051313 through 18051445
(45) 180H	18051446 through 18052175
(46) 182	613 and 33000 through 33842
(47) 182A	33843 through 34753, 34755 through 34999, and 51001 through 51556
(48) 182B	34754, 51557 through 51622, and 51624 through 52358
(49) 182C	631 and 52359 through 53007
(50) 182D	51623 and 18253008 through 18253598

Model	Serial No.
(51) 182E	18253599 through 18254423
(52) 182F	18254424 through 18255058
(53) 182G	18255059 through 18255844
(54) 182H	634 and 18255846 through 18256684
(55) 182J	18256685 through 18257625
(56) 182K	18255845, 18257626 through 18257698, and 18257700 through 18258505
(57) 182L	18258506 through 18259305
(58) 182M	662, 18257699, and 18259306 through 18260055
(59) 182N	18260056 through 18260445
(60) 185	632 and 185–0001 through 185–0237
(61) 185A	185–0238 through 185–0512
(62) 185B	185–0513 through 185–0653
(63) 185C	185–0654 through 185–0776
(64) 185D	185–0777 through 185–0967
(65) 185E	185–0968 through 185–1149
(66) A185E	185–0968 through 185–1599 and 18501600 through 18501832
(67) 190	7001 through 7999 and 16000 through 16183
(68) 195	7001 through 7999 and 16000 through 16183
(69) 206	206–0001 through 206–0275
(70) P206	P206–0001 through P206–0160
(71) P206A	P206–0161 through P206–0306
(72) P206B	P206–0307 through P206–0419
(73) P206C	P206–0420 through P206–0519
(74) P206D	P206–0520 through P206–0603
(75) P206E	P20600604 through P20600647
(76) U206	U206–0276 through U206–0437
(77) U206A	U206–0438 through U206–0656
(78) U206B	U206–0657 through U206–0914
(79) U206C	U206–0915 through U206–1234
(80) U206D	U206–1235 through U206–1444 and U20601445 through U20601587
(81) TP206A	P206–0161 through P206–0306
(82) TP206B	P206–0307 through P206–0419
(83) TP206C	P206–0420 through P206–0519
(84) TP206D	P206–0520 through P206–0603
(85) TP206E	P20600604 through P20600647
(86) TU206A	U206–0487 through U206–0656
(87) TU206B	U206–0657 through U206–0914
(88) TU206C	U206–0915 through U206–1234
(89) TU206D	U206–1235 through U206–1444 and U20601455 through U20601587
(90) 207	20700001 through 20700190
(91) T207	20700001 through 20700190
(92) 210	618 and 57001 through 57575
(93) 210–5(205)	641, 648, and 205–0001 through 205–0480
(94) 210–5(205A)	205–0481 through 205–0577
(95) 210A	616 and 21057576 through 21057840
(96) 210B	21057841 through 21058085
(97) 210C	21058086 through 21058139 and 21058141 through 21058220
(98) 210D	21058221 through 21058510
(99) 210E	21058511 through 21058715
(100) 210F	21058716 through 21058818
(101) 210G	21058819 through 21058936
(102) 210H	21058937 through 21059061
(103) 210J	21059062 through 21059199
(104) 210K	21059200 through 21059351
(105) T210F	T210–0001 through T210–0197
(106) T210G	T210–0198 through T210–0307
(107) T210H	T210–0308 through T210–0392
(108) T210J	T210–0393 through T210–0454
(109) T210K	21059200 through 21059351
(110) F150G	F150–0068 through F150–0219
(111) F150H	F150–0220 through F150–0389
(112) F150J	F150–0390 through F150–0529
(113) F150K	F15000530 through F15000658
(114) F172D	F172–0001 through F172–0018
(115) F172E	F172–0019 through F172–0085
(116) F172F	F172–0086 through F172–0179
(117) F172G	F172–0180 through F172–0319
(118) F172H	F172–0320 through F172–0654 and F17200655 through F17200754
(119) FR172E	FR17200001 through FR17200060
(120) FR172F	FR17200061 through FR17200145
(121) FR172G	FR17200146 through FR17200225
(122) 336	633, 636, and 336–0001 through 336–0195
(123) 337	647 and 337–0002 through 337–0239
(124) 337A	337–0240 through 337–0305, 337–0307 through 337–0469, and 337–0471 through 337–0525

Model	Serial No.
(125) 337B	656, 337–0001, 337–0470, 337–0526 through 337–0568, and 337–0570 through 337–0755
(126) 337C	337–0756 through 337–0978
(127) 337D	337–0979 through 337–1193
(128) 337E	33701194 through 33701316
(129) T337B	337–0001, 337–0470, 337–0526 through 337–0568, and 37–0570 through 337–0755
(130) T337C	337–0756 through 337–0978
(131) T337D	337–0979 through 337–1193
(132) T337E	33701194 through 33701316

What Cessna Accessory Kits Are Affected by This AD?

(d) The following is a list of the affected Cessna accessory kits:

Cessna Accessory Kit

AK140–10
AK150–7
AK150–121
AK170–10
AK177–10
AK182–75
AK195–10
AK210–77
AK210–93
AK210–171
AK210–172
AK210–173
AK210–174
AK336–32
AK336–36
AK336–103

What Is the Unsafe Condition Presented in This AD?

(e) The actions specified in this AD are intended to prevent slippage of the pilot/co-pilot shoulder harness, which could result in failure of the shoulder harness to maintain proper belt length adjustment and tension. This failure could result in pilot/co-pilot injury.

What Must I Do to Address This Problem?

(f) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect only the upper shoulder harness adjuster (part number (P/N) 443030–401) for the presence of a retainer spring.	Within the next 25 hours time-in-service (TIS) after the effective date of this AD.	Follow Cessna Single Engine Service Bulletin SEB86–8, Revision 1, and Cessna Multi-engine Service Bulletin MEB86–22, Revision 1, both dated July 28, 2003.
(2) If a retainer spring is found during the inspection of the upper shoulder harness adjuster (P/N 443030–401) required in paragraph (f)(1) of this AD: (i) remove the spring by cutting each side; and (ii) stamp out the –401 identification number.	Prior to further flight after the effective date of this AD.	Follow Cessna Single Engine Service Bulletin SEB86–8, Revision 1, and Cessna Multi-engine Service Bulletin MEB86–22, Revision 1, both dated July 28, 2003.
(3) If a retainer spring is not found during the inspection of the upper shoulder harness adjuster (P/N 443030–401) required in paragraph (f)(1) of this AD, make an entry in the airplane log book showing compliance with this AD.	Prior to further flight after the effective date of this AD.	Follow Cessna Single Engine Service Bulletin SEB86–8, Revision 1, and Cessna Multi-engine Service Bulletin MEB86–22, Revision 1, both dated July 28, 2003.
(4) Only incorporate Cessna Accessory Kits identified in paragraph (d) of this AD that have been inspected and modified in accordance with paragraphs (f)(1), (f)(2), (f)(2)(i), and (f)(2)(ii) of this AD.	As of the effective date of this AD	Follow Cessna Single Engine Service Bulletin SEB86–8, Revision 1, and Cessna Multi-engine Service Bulletin MEB86–22, Revision 1, both dated July 28, 2003.

(g) If you did the actions of this AD using Cessna Single Engine Service Bulletin SEB86–8 and Cessna Multi-engine Service Bulletin MEB86–22, both dated November 21, 1986, no further action is required as long as you used shoulder harness adjuster, P/N 443030–401.

May I Request an Alternative Method of Compliance?

(h) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4123; facsimile: (316) 946–4107.

May I Get Copies of the Documents Referenced in This AD?

(i) You may get copies of the documents referenced in this AD from Cessna Aircraft Company, Product Support P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 6, 2003.

Scott L. Sedgwick,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28428 Filed 11–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–41–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada JT15D–1, –1A, and –1B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Pratt & Whitney Canada (PWC) JT15D–1, –1A, and –1B turbofan engines with certain impellers part number (P/N) 3020365. This proposed AD would require a one-time borescope inspection of the rear face of certain impellers for evidence of a machined groove or step, and repair or replacement of the impeller if a groove or step is found. This proposed AD is prompted by three reports of uncontained failure of the impeller. We are proposing this AD to prevent uncontained failure of the impeller and possible damage to the airplane.

DATES: We must receive any comments on this proposed AD by January 12, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–41–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail:* 9_ane_adcomment@faa.gov.

You can get the service information identified in this proposed AD from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1, telephone (800) 268–8000; fax (450) 647–2888. You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–41–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

Transport Canada (TC), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on PWC JT15D–1, –1A, and –1B turbofan engines with certain impellers, P/N 3020365 installed. TC advises that there have been three uncontained failures of impellers, P/N 3020365. TC advises that some impellers, P/N 3020365, were manufactured with a machined groove or a step on the rear face. Incidents of impeller fracture and uncontained liberation of high-energy fragments have occurred. The National Transportation Safety Board has investigated and determined that machine marks on the back face of the impeller were the cause of these failures. An impeller with this machined groove or step on the rear face could result in an uncontained failure of the impeller.

Relevant Service Information

We have reviewed and approved the technical contents of Pratt & Whitney Canada Service Bulletin (SB) No. JT15D–72–7590, dated May 23, 2003. That SB describes procedures for borescope inspecting impellers, P/N 3020365, that were not previously inspected using PWC overhaul manual Revision 14, and that are not listed in Appendix A of the SB No. JT15D–72–7590, dated May 23, 2003. Transport Canada classified this SB as mandatory and issued airworthiness directive CF–2003–17, dated June 23, 2003, in order to ensure the airworthiness of these PWC engines in Canada.

FAA's Determination and Requirements of the Proposed AD

These PWC JT15D–1, –1A, and –1B turbofan engines, manufactured in Canada, are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept us informed of the situation described above. We have examined Transport Canada's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require a one-time borescope inspection of the rear face of certain impellers for evidence of a machined groove or step, and repair or replacement of the impeller, if a groove or step is found. The proposed AD would require you to use the service information described previously to perform these actions.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are about 1,300 PWC JT15D–1, –1A, and –1B turbofan engines of the affected design in the worldwide fleet. We estimate that 740 of the PWC engines installed on airplanes of U.S. registry would be affected by this

proposed AD. We also estimate that it would take about 2 work hours per engine to perform the proposed inspection at a hot section inspection interval, and 30 work hours per engine to replace impellers found with a groove or a step in the rear face at shop visit. The average labor rate is $65 per work hour. Required parts would cost about $55,427 per engine. Based on these figures, we estimate that for impellers inspected at hot section inspections, the total labor cost of the proposed AD to U.S. operators is $96,200. On the basis of 100 percent replacement, the total labor cost of the proposed AD to U.S. operators is estimated to be $1,443,000 and the parts replacement cost is estimated to be $41,015,980 for a total replacement cost of $42,555,180.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–41–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. The FAA amends § 39.13 by adding the following new airworthiness directive:

Pratt & Whitney Canada: Docket No. 2003–NE–41–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this airworthiness directive (AD) action by January 12, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney Canada (PWC) JT15D–1, –1A, and –1B turbofan engines with certain impellers, part number (P/N) 3020365, installed. These engines are installed on, but not limited to, Cessna Aircraft Company Models 500 and 501 airplanes.

Unsafe Condition

(d) This AD is prompted by three reports of uncontained failure of the impeller. We are issuing this AD to prevent uncontained failure of the impeller and possible damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) If you have already inspected the impeller, P/N 3020365, using PWC overhaul manual Revision 14, or if the impeller is listed in Appendix A of PWC (SB) No. JT15D–72–7590, dated May 23, 2003, no further action is required.

One-Time Borescope Inspection

(g) Perform a one-time borescope inspection of the impeller rear face for evidence of a machined groove or step, using paragraph 3.B. of Accomplishment Instructions of PWC SB No. JT15D–72–7590, dated May 23, 2003: as follows:

(1) For engines with 5,000 or more cycles-since-new (CSN) on the effective date of this AD, inspect within 250 cycles-in-service (CIS) after the effective date of this AD.

(2) For engines with fewer than 5,000 CSN on the effective date of this AD, inspect before reaching 5,250 CSN.

Disposition of Inspected Impellers

(h) Before further flight, repair or replace impellers that do not pass the inspection requirements of paragraph 3.B.(8) of Accomplishment Instructions of PWC SB No. JT15D–72–7590, dated May 23, 2003.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(j) You must use PWC SB No. JT15D–72–7590, dated May 23, 2003, to perform the one-time inspection required by this AD. Approval of incorporation by reference from the Office of the Federal Register is pending.

Related Information

(k) Transport Canada airworthiness directive CF–2003–17, dated June 23, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on November 6, 2003.

Robert Guyotte,

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

[FR Doc. 03–28431 Filed 11–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Parts 96 and 98

[Public Notice: 4537]

RIN 1400–AA–88 (Part 96); 1400–AB–69 (Part 98)

Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons; Preservation of Convention Records; Extension of Comment Period

AGENCY: Department of State.

ACTION: Extension of comment period.

SUMMARY: The Department of State (the Department) is extending by 30 days the public comment period for the proposed rules on the Accreditation of Agencies and Approval of Persons under the Hague Convention on Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA) and on the Preservation of Convention Records. The proposed rules were published in part II of the **Federal Register** on September 15, 2003 (68 FR 54064; 68 FR 54119). In response to public requests for additional time, the Department is extending the public comment period closing date from November 14, 2003, to December 15, 2003, for parts 96 and 98.

DATES: Comments must be received on or before December 15, 2003.

ADDRESSES: Commenters may send hard copy submissions or comments in electronic format. Commenters sending only hard copies must send an original and two copies referencing docket number State/AR–01/96 or State/AR–01/98 to: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, SA–29, 2201 C Street, NW., Washington, DC 20520. Hard copy comments may also be sent by overnight courier services to: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, 2201 C Street, NW., Washington, DC 20520. Do

not personally hand deliver comments to the Department of State.

Comments referencing the docket number State/AR–01/96 or State/AR–01/98 may be submitted electronically to *adoptionregs@state.gov*. Two hard copies of the comments submitted electronically must be mailed under separate cover as well. Electronic comments must be made in the text of the message or submitted as a Word file avoiding the use of any form of encryption or use of special characters. If you submit comments by hard copy rather than electronically, include a disk with the submission if possible. Hard copy submissions without an accompanying disk file, however, will be accepted.

FOR FURTHER INFORMATION CONTACT: Anna Mary Coburn or Jessica Rosenbaum at 202–647–2826. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On September 15, 2003, the Department published in part II of the **Federal Register** proposed rules to implement the Hague Convention on Intercountry Adoption and the IAA. The proposed rule for 22 CFR part 96 covered the accreditation and approval of agencies and persons seeking to provide adoption services for intercountry adoptions involving two counties party to the Convention (68 FR 54064). The proposed rule for 22 CFR part 98 covered the preservation of Convention records held by the Department and the Department of Homeland Security (68 FR 54119).

You can view electronic versions of the proposed rules on *http://www.regulations.gov*. Comments on the proposed rules were required to be received on or before November 14, 2003. The Department is extending the comment period for an additional 30 days. Comments must be received on or before December 15, 2003. Anyone seeking to submit comments must follow the procedures specified in the **ADDRESSES** section of the proposed rules as published in the **Federal Register** (68 FR 54064, September 15, 2003).

Dated: November 7, 2003.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 03–28544 Filed 11–12–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

48 CFR Parts 601, 602, 603, 604, 605, 606, 609, 611, 612, 613, 616, 617, 619, 622, 623, 625, 626, 628, 630, 632, 636, 637, 642, 651, 652, 653

[Public Notice 4525]

RIN 1400–AB06

Department of State Acquisition Regulation (DOSAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule makes various changes to the DOSAR. It updates the DOSAR to reflect the current acquisition organizational structure; provides information regarding electronic commerce initiatives as they relate to acquisition; outlines the Department's participation in the Defense Priorities Allocation System; incorporates a Small Business Administration (SBA) waiver regarding 8(a) competitive actions; establishes the Department's Mentor-Protégé Program; eliminates the requirement to collect data on minority business status; adds guidance and related clauses and provisions regarding overseas construction projects subject to the Foreign Service Buildings Act, as amended, and the Omnibus Diplomatic Security and Antiterrorism Act; adds guidance and a related provision regarding the acquisition of local guard services overseas; and, provides information regarding the Contractor Performance System. Finally, the proposed rule contains miscellaneous technical amendments and corrections needed to bring the DOSAR in line with recent changes in the Federal Acquisition Regulation.

DATES: Public comments must be received by January 12, 2004.

ADDRESSES: Comments may be sent to: Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street NW., Suite 603, State Annex Number 6, Washington, DC 20522–0602; e-mail address: *ginesgg@state.gov.* Please cite Department of State Acquisition Regulation in all correspondence.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, telephone (703) 516–1691 or at the e-mail address specified above.

SUPPLEMENTARY INFORMATION:

Background

As indicated in the Summary, the proposed rule makes numerous changes in a variety of areas. The more substantive changes are:

- Revision to 601.603–70 to delete several acquisition offices that have been eliminated.
- Addition of information in 604.502 regarding the posting of domestic solicitations on the Statebuy Interactive Platform (SIP). The SIP is Internet-based.
- Extension of the waiver in 605.202–70 to March 12, 2004, as approved by the agency head. Numerous administrative changes are made to Part 605 and other parts of the DOSAR to change the references to the Commerce Business Daily (CBD) to the Governmentwide Point of Entry (GPE), in accordance with Federal Acquisition Circular (FAC) 97–26.
- Addition of 609.404–70 to require that contracting officers, in addition to checking the Excluded Parties List, also check the list of entities on the Department of Treasury's Office of Foreign Asset Control List.
- Removal of the class deviation in 609.405 regarding checking the Excluded Parties List (EPL). The class deviation waived the requirement for overseas contracting activities to check the EPL, as well as waived the requirement for domestic contracting activities for actions under the simplified acquisition threshold. This deviation was put in place when the EPL was available only in hard copy, and receipt by both domestic and overseas contracting activities was inconsistent. Now that the EPL is available on the Internet, the class deviation is no longer required.
- Addition of a new Subpart 611.6. This reflects the Department's authority to use the Defense Priorities Allocation System (DPAS) for acquisitions related to the Department's Embassy Security Protection Program, as authorized by the Department of Commerce.
- Addition of a new Part 612 to delegate to the Head of the Contracting Activity the approval of requests for waiver to tailor a commercial item clause or provision that is inconsistent with customary commercial practices.
- Addition to 613.303–5 to allow for the placement of individual orders against blanket purchase agreements for commercial items that exceed the simplified acquisition threshold.
- Addition of Bureau Executive Directors to 617.504–70(a) as signatories of Economy Act Interagency Acquisition Agreements.
- Addition of HUBZone small, veteran-owned small, and service-disabled veteran-owned small businesses to the list of small business concerns in Part 619.
- Addition of 619.202–70 to outline the Department's Mentor-Protégé

Program. This program is similar to those established by other civilian agencies, such as the Department of Treasury. An associated solicitation provision and contract clause are added at 652.219–72 and 652.219–73, respectively.

• Addition at 619.805–2 of a waiver approved by the Small Business Administration regarding competitive 8(a) awards. The waiver allows the Department to acquire services exceeding $3 million and supplies exceeding $5 million on a non-competitive basis for acquisitions that supplement the security of U.S. diplomatic posts and protect the lives of Department personnel.

• Addition of a new Subpart 622.15 regarding the referral of suspected violations under Executive Order 13126, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor. Contracting officers shall refer suspected violations to the Department's Inspector General.

• Elimination of Part 626 regarding the collection of minority business status information. There is no longer a need to collect this information.

• Elimination of Subpart 623.1 to coincide with the elimination of FAR Subpart 23.1 as part of FAC 97–15.

• Revision of Subpart 623.4 to align it with FAR Subpart 23.4.

• Elimination of Subpart 625.3. The Balance of Payments Program was eliminated from the FAR in FAC 2001–07.

• Elimination of Subpart 625.7. The current FAR coverage is sufficient; no further implementation is required.

• Elimination of Subpart 628.70 regarding indemnification. Existing FAR coverage is sufficient. The associated clause at 652.228–70 is removed accordingly.

• Addition of Part 630 to indicate that the Procurement Executive is the agency head's designee for the purposes of FAR 30.201–5(a).

• Addition of 636.104–70 regarding the Foreign Service Buildings Act, as amended (22 U.S.C. 302). This statute limits competition for the construction, alteration, or repair of buildings or grounds abroad exceeding $5 million to American-owned firms or firms of countries which permit or agree to permit substantially equal access to American firms for comparable diplomatic and consular building projects. This statute also provides for a ten (10) percent price reduction preference for American-owned firms. An associated certification is added at 652.236–71. The purpose of the certification is to determine a bidder/offeror's status as an American-owned firm in accordance with the requirements of the statute.

• Addition of 636.104–71 regarding the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4852). Section 402 of this statute limits construction or design projects abroad exceeding $10 million, or diplomatic construction projects that involve technical security, to United States persons or qualified United States joint venture persons. This statute also excludes organizations that have business arrangements with the Government of Libya. An associated certification is added at 652.236–72. The purpose of the certification is to determine a bidder/offeror's status as a United States person or qualified United States joint venture person, and its business relations with Libya, in accordance with the requirements of the statute.

• Addition of 636.202 to designate the Director/Chief Operating Officer of the Bureau of Overseas Building Operations as the individual who may exempt a construction project from the general requirements as expressed in E.O. 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

• Elimination of 636.602–4 regarding the selection authorities for architect-engineer contracts. This is internal information that does not affect the public and does not need to be in the codified version of the regulation.

• Addition of 637.102–70 to provide guidance regarding the acquisition of local guard services overseas in accordance with Section 136 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864), which has continuing effect. Section 136 encourages the participation of United States persons and qualified United States joint venture persons in local guard contracts overseas under diplomatic security programs, and provides for a ten (10) percent price reduction preference for such firms. An associated certification is added at 652.237–73. The purpose of the certification is to determine a bidder/offeror's status as a United States person or qualified United States joint venture person in accordance with the requirements of the statute.

• Addition of Subpart 637.6 to reflect the Department's policy for using performance-based service contracts for all new service contracts. Contracting activities must prepare a written justification that must be approved by the Departmental Competition Advocate when deviating from this policy.

• Addition of Subpart 642.15 regarding the Contractor Performance System (CPS). The Department subscribes to the CPS maintained by the National Institutes of Health. Contracting officers must use the CPS to record their evaluation of a contractor's past performance for all contracts exceeding $100,000.

• Revision of the clause at 652.216–70, Ordering—Indefinite-Delivery Contract, to reflect a new form number for the Department's purchase order form. The form number OF–206 was changed to the DS–2076.

• Revision of the provision at 652.219–70, Department of State Subcontracting Goals, to add HUBZone small and service-disabled veteran-owned small businesses to the list of organizations that have established subcontracting goals.

• Revision of the clause at 652.236–70, Accident Prevention, to better clarify the situations under which the contracting officer must seek additional information in the contractor's written safety plan.

• Revision of the clause at 652.237–71, Identification/Building Pass, to provide more detailed information on what contractors must submit to receive a building pass to work on DOS facilities.

• Revision of the clause at 652.237–72, Observance of Legal Holidays and Administrative Leave, to reflect the Monday holiday law.

II. Regulatory Flexibility Act

The Department of State certifies that this regulation 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.*). A Regulatory Flexibility Analysis has, therefore, not been performed.

III. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 requires agencies to prepare several analytical statements before proposing any rule that may result in annual expenditures of $100 million of State, local, and Indian tribal governments or the private sector. Since this proposed rule will not result in expenditures of this magnitude, the Department certifies that such statements are not necessary.

IV. Paperwork Reduction Act

Information collection requirements have been approved under the Paperwork Reduction Act of 1980 by OMB, and have been assigned OMB control number 1405–0050. The Department is currently seeking approval for the information collection

requirements associated with Form DS–4053, Department of State Mentor-Protégé Program Application.

List of Subjects in 48 CFR Parts 601, 602, 603, 604, 605, 606, 609, 611, 612, 613, 616, 617, 619, 622, 623, 625, 626, 628, 630, 632, 636, 637, 642, 651, 652, 653

Government procurement.

Accordingly, title 48, chapter 6 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 601, 602, 603, 604, 605, 606, 609, 611, 612, 613, 616, 617, 619, 622, 623, 625, 626, 628, 630, 632, 636, 637, 642, 651, 652, and 653 continues to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subchapter A—General

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATION

2. Section 601.105–3 is revised to read as follows:

601.105–3 Copies.

The DOSAR is available through the Department's Intranet system at *http://aope.a.state.gov,* or through the Internet from A/OPE's Acquisition Web site. The Internet address is: *http://www.statebuy.gov/.*

3. Section 601.106 is amended by removing from the last sentence ''225,302 hours'' and inserting ''225,503 hours'' in its place.

4. Section 601.603–1 is added to read as follows:

601.603–1 General.

Details of the Department's acquisition career management program are described in 6 FAH–6, the Acquisition Career Management Program Handbook, which is available on the Intranet from the A/OPE Web site (*see* 601.105–3 for address).

5. Section 601.603–3 is amended by revising paragraph (d) to read as follows:

601.603–3 Appointment.

* * * * *

(d) *Personal services agreements.* Individuals who may sign personal services agreements (PSAs) are limited to the following:

(1) The Human Resources Officer;

(2) The Human Resources/Financial Management Officer; or,

(3) The Management Officer or an American Foreign Service Officer designated to perform human resource functions.

6. In section 601.603–70, paragraph (a) is revised and a sentence is added at the end of paragraph (b)(6) to read as follows:

601.603–70 Delegations of authority.

(a) *Delegations.* As stated in 601.603–3(a), there is no contracting officer authority conferred by virtue of position. Pursuant to 601.602–1(b), the Procurement Executive has designated the following as contracting activities as defined in FAR 2.101. These authorities are not redelegable. In addition, specific individuals are designated as heads of contracting activities (HCAs) (*see* FAR 2.101):

(1) *Overseas posts.* Each overseas post shall be regarded as a contracting activity to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services. The Principal Officer, the Management Officer, or the Supervisory General Services Officer are designated as HCAs; *provided,* that he/she has a contracting officer's warrant issued by the Procurement Executive. The Procurement Executive (or authorized A/OPE staff) may delegate to a contracting officer, on a case-by-case basis, the authority to award a contract or modification which exceeds the contracting officer's warrant level.

(i) No authority is delegated to enter into cost-reimbursement, fixed-price incentive, or fixed-price redeterminable contracts. Design/build solicitations and contracts may only be entered into with the written approval of A/OPE and OBO. Proposed construction contracts exceeding $500,000 and any related architect-engineer contracts must have prior A/OPE approval.

(ii) When expressly authorized by a U.S. Government agency which does not have a contracting officer at the post, the officers named in paragraph (a)(1) introductory text of this section may enter into contracts for that agency. Use of this authority is subject to the statutory authority of that agency and any special contract terms or other requirements necessary for compliance with any conditions or limitations applicable to the funds of that agency. The agency's authorization shall cite the statute(s) and state any special contract terms or other requirements with which the acquisition so authorized must comply. In view of the contracting officer's responsibility for the legal, technical, and administrative sufficiency of contracts, questions regarding the propriety of contracting actions that the post is required to take pursuant to this authority may be referred to the Department for resolution with the headquarters of the agency concerned.

(2) *Office of Logistics Management; Office of Acquisition Management (A/LM/AQM).* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies and services, including construction, is delegated to the Director or designee as the HCA.

(3) *Foreign Service Institute.* The authority to enter into and administer contracts pursuant to Chapter 7, Title I, of the Foreign Service Act of 1980, as amended (22 U.S.C. 4021 *et seq.*), is delegated to the Director of the Foreign Service Institute, the Executive Director, the Deputy Executive Director, and the Supervisory Contracting Officer as the HCA.

(4) *Office of Foreign Missions.* The authority to enter into and administer contracts pursuant to Title II of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4301 *et seq.*), is delegated to the Director, Office of Foreign Missions, and the Administrative Officer as the HCA.

(5) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts pursuant to the United Nations Participation Act of 1945, as amended (22 U.S.C. 287), is delegated to the Counselor for Administration as the HCA.

(6) *Diplomatic Telecommunication Service—Program Office.* The authority to enter into and administer contracts for the leasing or purchase of telecommunications services, circuits, subsystems, supplies and associated professional services is delegated to the Chief, Acquisition Branch as the HCA.

(7) *Regional Procurement Support Offices.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services on behalf of overseas posts is delegated to each Director, Regional Procurement Support Office (RPSO) as the HCA at the following locations:

(i) RPSO Frankfurt in conjunction with Consulate General Frankfurt; and

(ii) RPSO Florida in conjunction with the Florida Regional Center.

(b) * * *

(6) * * * These authorities extend to any acquisition performed by any Department of State contracting activity on behalf of INL.

* * * * *

PART 602—DEFINITIONS OF WORDS AND TERMS

7. Section 602.101–70 is amended by adding, in alphabetical order, a definition of ''Chief of Mission''; and, by revising the definition of ''Despatch Agency'', as follows:

602.101–70 DOSAR definitions.

* * * * *

Chief of Mission means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) of the Foreign Service Act of 1980 (Pub. L. 96–465) to be temporarily in charge of such a mission or office.

* * * * *

Despatch Agency means the office responsible for the transportation of supplies between the U.S. and posts within its specific geographic area as assigned by the Office of Logistics Operations. There are six Despatch Agencies, one each in Iselin, New Jersey; Baltimore, Maryland; Miami, Florida; Seattle, Washington; Brownsville, Texas; and the European Logistical Support Office in Antwerp, Belgium.

* * * * *

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

8. Section 603.104–5 is redesignated as section 603.104–4.

9. Section 603.104–10 is redesignated as section 603.104–7. New section 603.104–7 is amended in paragraph (d)(2)(ii)(B) by correcting the citation at the end of the paragraph to read ''FAR 3.104–7(d)(2)(ii)(B).''

10. Section 603.204 is amended by revising paragraph (b) to read as set forth below, and by removing paragraph (c):

603.204 Treatment of violations.

* * * * *

(b) Upon completion of the investigation and/or prosecution or with the consent of the U.S. Department of Justice, the Assistant Inspector General for Investigations shall provide to the Procurement Executive a report, together with all pertinent documentation, concerning the suspected violation. The Office of the Procurement Executive shall provide to the contractor a written notice by certified mail, return receipt requested, presenting the findings, and shall establish a schedule, including location, for an investigative hearing for the purposes described in FAR 3.204(b).

* * * * *

11. Section 603.601 is amended by adding the following sentence to the end of paragraph (a):

603.601 Policy.

(a) * * * This policy also applies to individuals hired under personal services agreements and personal services contracts.

12. A new Subpart 603.8, consisting of section 603.804, is added to read as follows:

Subpart 603.8—Limitations on the Payment of Funds To Influence Federal Transactions

603.804 Policy.

(b) The contracting officer shall forward a copy of all contractor disclosures furnished pursuant to the clause at FAR 52.203–12 to the Office of the Legal Adviser, Employment Law, Senior Ethics Counsel (L/EMP/Ethics).

PART 604—ADMINISTRATIVE MATTERS

13. Subpart 604.5 is revised to read as follows:

Subpart 604.5—Electronic Commerce in Contracting

604.502 Policy.

(b) The Assistant Secretary of State for Administration is the head of the agency for the purpose of FAR 4.502(b).

(1)(i) *Posting solicitations for domestic contracting activities.* Contracting officers at domestic contracting activities shall post all open market competitive, unclassified Requests for Proposals and Invitations for Bids exceeding the simplified acquisition threshold on the Internet, unless an exception has been approved by the head of the contracting activity. Contracting officers may post Requests for Quotations and noncompetitive acquisitions if desired. Solicitations shall be posted through the Statebuy Interactive Platform at *https://state.monmouth.army.mil/*. If the SIP is temporarily unavailable (due either to problems with the SIP system or the Internet connections), the solicitation shall be posted on the Governmentwide point of entry (GPE), and immediately posted on the SIP when the SIP again becomes available.

(ii) *Materials not in automated format.* For solicitations containing drawings or other materials that are not in an automated format, the contracting officer shall:

(A) Post as much of the solicitation as possible on the Internet; and,

(B) Make hard copies available for those parts of the solicitation that are not in an automated format.

(iii) *Posting solicitations for overseas contracting activities.* Contracting officers at overseas contracting activities shall post competitive local guard solicitations on the Internet using the Statebuy Interactive Platform if U.S. firms may be competing. Posting of other solicitations is optional.

Subchapter B—Competition and Acquisition Planning

PART 605—PUBLICIZING CONTRACT ACTIONS

14. Section 605.202–70 is amended—

(a) By removing ''CBD'' in the first sentence of paragraph (a);

(b) By adding the words ''in the Governmentwide point of entry (GPE)'' after the word ''notices'' in the first sentence of paragraph (a);

(c) By removing ''CBD'' and inserting ''GPE'' in its place in the second sentence of paragraph (a);

(c) By removing the date ''May 19, 2001'' and inserting the date ''March 12, 2004'' in its place in the last sentence of paragraph (a);

(d) By removing ''CBD'' and inserting ''GPE'' in its place in paragraph (b); and,

(e) By revising paragraph (d) to read as follows:

605.202–70 Foreign acquisitions.

* * * * *

(d) *Policy exclusions.* GPE waiver authority does not apply to local guard service contracts that exceed $250,000. Local guard service contracts that exceed $250,000 shall be published in the GPE, as well as any construction contracts exceeding $5 million. Option year prices shall be included when computing the applicability of this threshold.

15. Section 605.207–70 is amended by removing the word ''synopsis'' and inserting the word ''notice'' in its place.

16. Section 605.303 is amended by removing the word ''Office'' and inserting the word ''Bureau'' in its place in the first sentence of paragraph (a).

PART 606—COMPETITION REQUIREMENTS

17. Section 606.302–6 is amended—

a. By removing the words ''Commerce Business Daily'' and inserting ''GPE'' in their place in paragraph (c)(1)(i);

b. By removing the words ''CBD synopsis'' and inserting ''GPE notice'' in their place in paragraph (c)(1)(ii); and,

c. By removing the words ''Commerce Business Daily'' and inserting ''GPE'' in their place in paragraph (c)(2).

18. Section 606.370 is amended by removing the word ''Administrative'' and inserting the word ''Management'' in its place in the third sentence of paragraph (b).

19. Section 606.501 is amended by inserting the following sentence after the first sentence in paragraph (b):

606.501 Requirement.

* * * * *

(b) * * *

A/LM/AQM's competition advocate is also designated the contracting activity competition advocate for the Regional Procurement Support Offices. * * *

20. Section 606.501–70 is amended by removing the word ''Administrative'' and inserting the word ''Management'' in its place.

PART 609—CONTRACTOR QUALIFICATIONS

21. A new section 609.404–70 is added to read as follows:

609.404–70 Specially Designated Nationals List.

Contracting officers shall not award to any of the entities listed on the Specially Designated Nationals (SDN) List, available on the Department of Treasury's Office of Foreign Assets Control Web site at *http://www.treas.gov/ofac/*. Contracting officers shall consult this list prior to award for any dollar amount. This list may also be accessed through the EPLS Web site at *http://epls.arnet.gov*.

22. Section 609.405 is amended—

(a) By removing paragraphs (d) and (d)(1)(i);

(b) By adding a new paragraph (d)(3) to read as indicated below; and, (c) By removing paragraphs (d)(4)(i) and (d)(4)(ii).

609.405 Effect of listing.

* * * * *

(d)(3) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(d)(3).

23. Section 609.406–3 is amended by revising the last two sentences of paragraph (a)(1) to read as follows:

609.406–3 Procedures.

(a)(1) * * * The Office of the Inspector General shall investigate the matter, as appropriate, and provide a copy of its investigation report to the Procurement Executive for consideration of debarment action, if and when appropriate. The contracting officer shall provide to the Procurement Executive and the Office of the Inspector General a copy of his or her intended actions in response to the Office of the Inspector General report.

* * * * *

PART 611—DESCRIBING AGENCY NEEDS

24. A new Subpart 611.6 is added to read as follows:

Subpart 611.6—Priorities and Allocations

Sec.

Subpart 611.6—Priorities and Allocations

611.600 Scope of subpart.

On September 18, 2001, the Department of Commerce (DOC) authorized the Department of State to use the Defense Priorities and Allocations System (DPAS). This authority expires on October 1, 2006. The Department of Defense has approved the Department's Embassy Security Protection Program (DOSESPP) as a national defense program eligible for the priorities support under the DPAS.

611.602 General.

(c)(1) Authority to use the DPAS is limited to the following circumstances:

(i) The contract or order must be placed with a U.S. firm; and, (ii) The contract or order must be in support of the DOSESPP, which consists of work involving the security of overseas posts. The DOSESPP includes a wide range of elements of both physical and technical security, such as:

(A) New Embassy/Consulate Compound (NEC/NCC) Program. This program involves the construction of new secure Embassies, Consulates, and related facilities, as well as renovations of newly acquired buildings when used as alternatives to the construction of new secure buildings.

(B) Physical security upgrade. This includes installation of forced entry/ballistic resistant (FE/BR) windows and doors, walls/fences, active anti-ram barriers, bollards (concrete and steel barriers), and related items.

(C) Forced entry/ballistic resistant (FE/BR) components. This includes doors, windows, and related facilities and items that can provide the necessary time to protect Government personnel from attack.

(D) Armored vehicles. This includes passenger vehicles with appropriate armoring.

(E) Entry control and building surveillance equipment. This includes walk-through metal detectors, X-ray equipment, surveillance cameras, explosive detection equipment, and other features to enhance the protection of Government personnel and facilities.

(2) DOC has assigned the following priority rating to DOSESPP contracts or orders: DO–H8.

611.603 Procedures.

(f) Department of State contracting officers are authorized to sign DO-H8 rated contracts or orders. It is the responsibility of the requirements office to determine which contracts or orders should be rated. All contracts with U.S. firms under the DOSESPP will not necessarily need to be assigned a priority rating.

(g) The contracting officer should place a DO-H8 rating on any contract or order if there is any doubt as to whether a contractor doing work for Embassy security protection will be able to deliver on time. If an unrated contract or order is not completed on time, the contracting officer may modify the contract or order to add the rating; however, the rating shall only be effective for the newly established delivery date, not the original delivery date.

(1) DOC can provide special assistance to implement the DPAS program in specific cases. For example, the Department may request a higher priority rating, or request that DOC issue a written directive to a contractor that is not complying with the DPAS regulations. In addition, although the DPAS program normally applies only to U.S. firms, if the Department has a prime contract with a foreign firm that will be awarding subcontracts with U.S. firms, the Department may request from DOC authorization to place a rating on the prime contract.

(2) Contracting officers or requirements offices who wish to request special assistance from DOC must complete DOC Form BXA–999, *Request for Special Priorities Assistance*, and submit it to A/OPE, which will arrange for submission of the request to DOC.

PART 612—ACQUISITION OF COMMERCIAL ITEMS

25. A new Part 612, consisting of Subpart 612.3 and section 612.302, is added to subchapter B as follows:

PART 612—ACQUISITION OF COMMERCIAL ITEMS

Subpart 612.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

612.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) The head of the contracting activity shall approve any request for a waiver to tailor a clause or otherwise include any additional terms or conditions in a solicitation or contract in a manner that is inconsistent with customary commercial practice.

Subchapter C—Contracting Methods and Contract Types

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

26. Section 613.303–5 is amended by adding a new paragraph (b) to read as follows:

613.303–5 Purchases under BPAs.

(b) Individual purchases under BPAs for commercial items may exceed the simplified acquisition threshold; however, the higher threshold must be consistent with the requirements of FAR 13.303–5(b)(1) and (2).

* * * * *

PART 616—TYPES OF CONTRACTS

27. Section 616.505 is amended by correcting the paragraph designation of ''(b)(4)'' to read ''(b)(5)''.

PART 617—SPECIAL CONTRACTING METHODS

28. Section 617.204 is amended by adding the following sentence to the end of paragraph (e):

617.204 Contracts.

(e) * * * The Procurement Executive may delegate this approval authority to individuals within the Office of the Procurement Executive.

29. Section 617.504–70 is amended by adding the words ''and Bureau Executive Directors'' after the words ''deputy assistant secretaries'' in paragraph (a) and by removing the parenthetical ''(illustrated in part 653)'' in the first sentence of paragraph (b).

Subchapter D—Socioeconomic Programs

PART 619—SMALL BUSINESS PROGRAMS

30. Section 619.201 is revised to read as follows:

619.201 General policy.

(a) The Operations Director, Office of Small and Disadvantaged Business Utilization (A/SDBU), is responsible for performing all functions and duties prescribed in FAR 19.201(c) and (d).

(b) In addition to the requirements of FAR 19.201(b), each head of the contracting activity, or designee, is responsible for establishing in coordination with the A/SDBU Operations Director annual goals for the DOS small business program.

(c) The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 19.201(c).

(d) Pursuant to FAR 19.201(d), each Small and Disadvantaged Business Utilization Specialist (SDBUS) is responsible for—

(1) Maintaining a program to locate capable small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business sources to fulfill DOS acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns on DOS contracting and subcontracting opportunities and other acquisition matters;

(3) Advising contracting activities on new or revised small business policies, regulations, procedures, and other related information;

(4) Assuring that small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns are provided adequate specifications or drawings by initiating, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(5) Reviewing all proposed acquisitions in excess of the simplified acquisition threshold, including commercial items using the simplified acquisition procedures of FAR Subpart 13.5, and task and delivery orders under multiple award contracts exceeding $2 million, to assure that small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns will be afforded an equitable opportunity to compete and, as appropriate, initiating recommendations for small business, 8(a), or HUBZone set-asides. This includes proposed contract modifications for new or additional requirements that do not fall within the original scope of the contract and which exceed the simplified acquisition limitation. This does not include the exercising of contract options;

(6) Assuring that contract financing available under existing regulations is offered when appropriate and that requests by small business concerns for such financing are not treated as a handicap in the award of contracts;

(7) Providing assistance to the contracting officer in making determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participating in the evaluation of a prime contractor's small, small disadvantaged, woman-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business subcontracting plans;

(9) Assuring that the participation of small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns is accurately reported;

(10) Attending, as appropriate, debriefings to unsuccessful small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(11) Making available to SBA copies of solicitations when so requested;

(12) When a bid or offer from a small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business has been rejected for non-responsiveness or non-responsibility, upon request, aid, counsel, and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(13) Participating in Government-industry conferences to assist small business concerns, including Business Opportunity/Federal Acquisition Conferences, Minority Business Enterprise Acquisition Seminars and Business Opportunity Committee meetings;

(14) Maintaining a list of supplies and services that have been placed as repetitive small business set-asides;

(15) Participating in the development, implementation, and review of automated source systems to assure that the interests of small business concerns are included;

(16) Advising potential sources how they can obtain information about competitive acquisitions;

(17) Providing small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns information regarding assistance available from Federal agencies such as the Small

Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor and others, including State agencies and trade associations; and

(18) Participating in interagency programs relating to small business matters as authorized by the A/SDBU Operations Director.

(f)(1) The Procurement Executive is the agency designee for the purposes of FAR 19.201(f)(1). The written determination shall be forwarded to the Procurement Executive through the A/SDBU Operations Director.

31. A new section 619.202, and subsection 619.202–70 are added to read as follows:

619.202 Specific policies.

619.202–70 The Department of State Mentor-Protégé Program.

(a) *Purpose.* The Mentor-Protégé Program is designed to motivate and encourage firms to assist small businesses with business development, including small disadvantaged businesses, women-owned small businesses, HUBZone small businesses, veteran-owned small businesses and service-disabled veteran-owned small businesses. The program is also designed to improve the performance of DOS contracts and subcontracts, foster the establishment of long-term business relationships between small businesses and prime contractors, and increase the overall number of small businesses that receive DOS contract and subcontract awards. The program is limited to non-commercial item acquisitions.

(b) *Definitions.* The definitions of small business (SB), HUBZone small business concern (HUBZone), small disadvantaged business (SDB), women-owned small business (WOSB), veteran-owned small business (VOSB), and service-disabled veteran-owned small business (SDVOSB) are the same as found in FAR 2.101.

Mentor means a prime contractor that elects to promote and develop small business subcontractors by providing developmental assistance designed to enhance the business success of the protégé.

Protégé means a small business, HUBZone small business, small disadvantaged business, women-owned small business, veteran-owned small business, and service-disabled veteran-owned small business who is the recipient of developmental assistance pursuant to a mentor-protégé program.

(c) *Non-affiliation.* For purposes of the Small Business Act, a protégé firm is not considered an affiliate of a mentor firm solely because the protégé firm is receiving developmental assistance from the mentor firm under the program.

(d) *General policy.* (1) Eligible business prime contractors not included on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'' that are approved as mentor firms may enter into agreements with eligible protégés.

(2) A firm's status as a protégé under a DOS contract shall not have an effect on the firm's ability to seek other prime contracts or subcontracts.

(e) *Incentives for prime contractor participation.* (1) Under the Small Business Act (15 U.S.C. 637(d)(4)(E)), DOS is authorized to provide appropriate incentives to encourage subcontracting opportunities for small businesses consistent with the efficient and economical performance of the contract. This authority is limited to negotiated acquisitions.

(2) Before awarding a contract that requires a subcontracting plan, the existence of a mentor-protégé arrangement, and performance, if any, under an existing arrangement, may be considered by the contracting officer in:

(i) Evaluating the quality of a proposed subcontracting plan under FAR 19.704–5; and,

(ii) Assessing the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in determining contractor responsibility under FAR 19.705–5(a)(1).

(3) A non-monetary award may be presented annually (or as often as appropriate) to the mentoring firm providing the most effective developmental support of a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the Operations Director, A/SDBU.

(f) *Measurement of program success.* The success of the DOS Mentor-Protégé Program will be measured by:

(1) The increase in the number and dollar value of contracts awarded to protégé firms under DOS contracts from the date the protégé enters the program;

(2) The increase in the number and dollar value of contracts and subcontracts awarded to the protégé under other Federal agencies and commercial contracts; and,

(3) The developmental assistance provided by the mentor firm and the resulting increase in the technical, managerial, financial or other capabilities of the protégé firm, as reported by the protégé.

(g) *Eligibility of mentor firms.* A mentor firm:

(1) May be either a large or small business;

(2) Must be eligible for award of U.S. Government contracts;

(3) Must be able to provide developmental assistance that will enhance the ability of protégés to perform as subcontractors; and,

(4) Will be encouraged to enter into arrangements with protégés and firms with whom they have established business relationships.

(h) *Eligibility of protégé firms.* (1) A protégé firm must be:

(i) A SB, HUBZone, SDB, WOSB, VOSB, or SDVOSB as those terms are defined in FAR 2.101;

(ii) Small in the NAICS code for the services or supplies to be provided by the protégé to the mentor; and,

(iii) Eligible for award of U.S. Government contracts.

(2) Except for SDB and HUBZone firms, a protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (h)(1) of this subsection. Mentors may rely in good faith on written representations by potential protégés that they meet the specified eligibility requirements. SDB status eligibility and documentation requirements are determined by FAR 19.304. HUBZone status eligibility and documentation requirements are determined by FAR 19.1303.

(3) Protégés may have multiple mentors. Protégés participating in mentor-protégé programs in addition to DOS's program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

(i) *Selection of protégé firms.* (1) Mentor firms are solely responsible for selecting protégé firms. The mentor is encouraged to identify and select a broad base of protégé firms whose core competencies support DOS's mission.

(2) Mentors may have multiple protégés.

(3) The selection of protégé firms by mentor firms may not be protested, except that any protest regarding the size or eligibility status of an entity selected by a mentor shall be handled in accordance with FAR and SBA regulations.

(j) *Application and agreement process for mentor-protégé teams to participate in the program.* (1) Firms interested in becoming a mentor firm must apply in writing to A/SDBU. The application (Form DS–4053, Department of State Mentor-Protégé Program Application) shall be evaluated by the nature and extent of technical and managerial support proposed as well as the extent of financial assistance in the form of

equity investment, loans, joint-venture support, and traditional subcontracting support proposed.

(2) A proposed mentor shall submit the application form and associated information to A/SDBU.

(k) *A/SDBU review of application.* (1) A/SDBU shall review the information to ensure the mentor and protégé are eligible and the information provided is complete. A/SDBU shall consult with the contracting officer on the adequacy of the proposed mentor-protégé arrangement, and its review shall be complete no later than 30 calendar days after receipt of the application by A/SDBU.

(2) Upon completion of the review, A/SDBU will advise the mentor if its application is acceptable. The mentor may then implement the developmental assistance program in accordance with the approved agreement.

(3) The agreement defines the relationship between the mentor and protégé firms only. The agreement itself does not create any privity of contract between the mentor or protégé and the DOS.

(l) *Developmental assistance.* The forms of developmental assistance a mentor can provide to a protégé include:

(1) Management guidance relating to:

(i) Financial management;

(ii) Organizational management;

(iii) Overall business management/planning;

(iv) Business development; and,

(v) Technical assistance.

(2) Loans;

(3) Rent-free use of facilities and/or equipment;

(4) Property;

(5) Temporary assignment of personnel to protégé for purpose of training; and

(6) Any other types of permissible, mutually beneficial assistance.

(m) *Obligation.* (1) A mentor or protégé firm may voluntarily withdraw from the program. However, in no event shall such withdrawal impact the program mission and contractual requirements under the prime contract.

(2) Mentor and protégé firms shall submit to A/SDBU annual reports on program progress of the mentor-protégé agreements. Large business mentors may submit these reports as part of their SB, HUBZone, SDB, WOSB, VOSB, and SDVOSB plan submission in accordance with the due date on the SF–295. DOS shall consider the following in evaluating these reports:

(i) Specific actions taken by the contractor, during the evaluation period, to increase the participation of protégés as suppliers to the U.S. Government and to commercial entities;

(ii) Specific actions taken by the mentor, during the evaluation period, to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(iii) To what extent the protégé has met the developmental objectives in the agreement; and,

(iv) To what extent the mentor firm's participation in the Mentor-Protégé Program resulted in the protégé receiving contract(s) and subcontract(s) from private firms and agencies other than the DOS.

(3) The DOS A/SDBU shall submit the annual reports to the cognizant contracting officer regarding participating prime contractor(s) performance in the program.

(4) Mentor and protégé firms shall submit an evaluation to the A/SDBU at the conclusion of the mutually agreed upon program period, the conclusion of the contract, or the voluntary withdrawal by either party from the program, whichever comes first.

(n) *Internal controls.* (1) A/SDBU shall oversee the program and shall work with the cognizant contracting officer to achieve program objectives.

(2) DOS may rescind approval of an existing Mentor-Protégé agreement if it determines that such an action is in the Department's best interest. The recission shall be in writing and sent to the mentor and protégé firms after approval by the A/SDBU Operations Director. Recission of an agreement does not change the terms of the subcontract between the mentor and the protégé or the prime contractor's obligations under its subcontracting plan.

(o) *Solicitation provision and contract clause.* (1) The contracting officer shall insert the provision at 652.219–72, Department of State Mentor-Protégé Program, in all unrestricted solicitations exceeding $500,000 ($1,000,000 for construction) that offer subcontracting opportunities.

(2) The contracting officer shall insert the clause at 652.219–73, Mentor Requirements and Evaluation, in all contracts where the prime contractor has signed a Mentor-Protégé Agreement with the Department of State.

32. Subpart 619.7 is amended by revising the Subpart heading to read as follows:

Subpart 619.7—The Small Business Subcontracting Program

33. Section 619.705–1 is revised to read as follows:

619.705–1 General support of the program.

It is the Department's policy to incorporate its current fiscal year goals as negotiated with the SBA into all pertinent Department solicitations, in addition to the standard subcontract clauses. Incorporation of the goals does not require that large prime contractors must subcontract, but does require that to the extent they plan to subcontract, specific goals be established for doing business with small, small disadvantaged, women-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business firms. Where funds are available, an incentive clause such as that found in FAR 52.219–10, Incentive Subcontracting Program, is encouraged.

34. Section 619.705–3 is revised to read as follows:

619.705–3 Preparing the solicitation.

To further promote the use of small, disadvantaged, women-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business firms by large prime contractors, contracting officers are encouraged to consider the adequacy of the subcontracting plans, and/or past performance in achieving negotiated subcontract goals, as part of the overall evaluation of the technical proposals.

35. Section 619.705–4 is revised to read as follows:

619.705–4 Reviewing the subcontracting plan.

A/SDBU shall review subcontracting plans to determine if small business, small disadvantaged, women-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business concerns are afforded the maximum practicable opportunity to participate as subcontractors. A/SDBU shall recommend to the contracting officer changes needed to subcontracting plans found to be deficient.

36. Section 619.705–6–70 is amended by revising the first sentence in paragraph (b) to read as follows:

619.705–6–70 Reporting responsibilities.

* * * * *

(b) Contracting officers shall collect subcontracting data from contractors required to establish subcontracting plans in support of small, small disadvantaged, women-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business concerns.

* * * * *

37. Section 619.708–70 is amended by removing the words ''and Small Disadvantaged Business''.

38. Section 619.801 is removed.

39. Section 619.805–2 is amended by adding a new paragraph (a)(2) to read as follows:

619.805–2 Procedures.

(a) * * *

(2) In accordance with a waiver approved by SBA, contract actions for services exceeding $3 million and supplies exceeding $5 million that supplement the security of U.S. diplomatic posts and protect the lives of Department personnel may be awarded non-competitively. Contracting officers do not need to compete 8(a) acquisitions as stated above when those acquisitions exceed the 8(a) competition thresholds. This waiver is in effect for the duration of the national state of emergency as declared by the President of the United States. If a contracting officer has a question as to whether a particular action falls under this waiver, the contracting officer should contact A/SDBU.

* * * * *

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

40. Subpart 622.13 is amended by revising the Subpart heading to read as follows:

Subpart 622.13—Special Disabled Veterans, Veterans Of The Vietnam Era, And Other Eligible Veterans

41. Section 622.1303 is redesignated as section 622.1305. Newly designated 622.1305 is amended by revising the citation ''FAR 22.1303'' at the end of the sentence to read ''FAR 22.1305.''

42. Section 622.1308 is redesignated as section 622.1310. Newly designated 622.1310 is amended by revising the citation ''FAR 22.1308 (a) (2) and (c)'' at the end of the sentence to read ''FAR 22.1310(a)(1)(ii) and (a)(2).''

43. A new Subpart 622.15, consisting of section 622.1503, is added to read as follows:

Subpart 622.15—Prohibition Of Acquisition Of Products Produced By Forced Or Indentured Child Labor

622.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

(e) The contracting officer shall refer to the DOS Inspector General for Investigation any instances where the contracting officer has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract awarded subject to the certification required in FAR 22.1503(c).

PART 623—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

44. Part 623 is amended by revising the heading to read as set forth above.

45. Subpart 623.1, consisting of sections 623.104 and 623.107, is removed and reserved.

46. Section 623.400 is amended by removing the words ''made and/or performed'' and inserting the word ''awarded'' in their place in the second sentence.

47. Section 623.404 is revised to read as follows:

623.404 Agency affirmative procurement programs.

(a) The Department's affirmative procurement program has been established by A/OPE. It is available on the A/OPE Internet and Intranet Web sites at *http://www.statebuy.gov/green.htm* and *http://aope.a.state.gov/green2.htm,* respectively.

PART 625—FOREIGN ACQUISITION

48. Section 625.102 is removed.

49. A new section 625.103 is added to read as follows:

625.103 Exceptions.

(a) The authority to make the determination prescribed in FAR 25.103(a) is delegated, without power of redelegation, to the head of the contracting activity.

50. Section 625.105 is revised to read as follows:

625.105 Determining reasonableness of cost.

(a)(1) The authority to make the determinations prescribed in FAR 25.105(a)(1) is delegated, without power of redelegation, to the head of the contracting activity.

51. Section 625.108 is removed.

52. Section 625.202 is revised to read as follows:

625.202 Exceptions.

(a)(1) The authority to make the determination prescribed in FAR 25.202(a)(1) is delegated, without power of redelegation, to the head of the contracting activity.

53. Section 625.203 is removed.

54. Section 625.204 is revised to read as follows:

625.204 Evaluating offers of foreign construction material.

(b) The head of the contracting activity is the agency head for the purposes of FAR 25.204(b).

55. Subpart 625.3, consisting of sections 625.300, 625.300–70, 625.302, and 625.304 is removed and reserved.

56. Subpart 625.7, consisting of section 625.703, is removed.

PART 626—OTHER SOCIOECONOMIC PROGRAMS

57. Part 626, consisting of Subpart 626.2 and section 626.200–70, is removed.

Subchapter E—General Contracting Requirements

PART 628—BONDS AND INSURANCE

58. Section 628.203 is amended in paragraph (g) by removing the words ''Office of the Inspector General'' and inserting the words ''Assistant Inspector General for Investigations'' in their place.

59. Subpart 628.70, consisting of section 628.7001, is removed.

PART 630—COST ACCOUNTING STANDARDS ADMINISTRATION

60. A new Part 630 is added to read as follows:

PART 630—COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 630.2—CAS Program Requirements

630.201 Contract requirements.

630.201–5 Waiver.

(a) The Procurement Executive is the head of the agency for the purposes of FAR 30.201–5(a) and (b).

PART 632—CONTRACT FINANCING

61. Section 632.006–2 is amended by removing the words ''Assistant Inspector General for Investigations'' and inserting the words ''Procurement Executive'' in their place.

62. Subpart 632.4 is amended by revising the Subpart heading to read as follows:

Subpart 632.4—Advance Payments for Non-Commercial Items

63. Section 632.903 is removed.

64. A new section 632.906 is added to read as follows:

632.906 Making payments.

(a) *General.* The authority to make the determination prescribed in FAR 32.906(a) is delegated, without power of redelegation, to the head of the contracting activity. Before making this determination, the head of the contracting activity shall consult with the appropriate financial office.

Subchapter F—Special Categories of Contracting

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

65. Section 636.101–70 is revised to read as follows:

636.101–70 Exception.

Contracts for overseas construction, including capital improvements, alterations, and major repairs, may be excepted where necessary from the provisions of the FAR (48 CFR Chapter 1) under the authority of section 3 of the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 294). The Director/Chief Operating Officer of the Bureau of Overseas Buildings Operations is authorized to approve such exceptions.

66. Sections 636.104, 636.104–70 and 636.104–71, are added to read as follows:

636.104 Policy.

636.104–70 Foreign Service Buildings Act of 1926, as amended.

(a) *Policy.* Section 11 of the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 302) limits competition for the construction, alteration, or repair of buildings or grounds abroad exceeding $5 million to:

(1) American-owned firms; or

(2) Firms from countries which permit or agree to permit substantially equal access to American firms for comparable diplomatic and consular building projects.

(b) *Limitation.* This participation may be permitted by or limited to:

(1) Host-country firms where required by international agreement; or

(2) By the laws of the host country; or

(3) Where determined by the Secretary of State to be necessary in the interest of bilateral relations or necessary to carry out the construction project.

(c) *Evaluation preference.* For purposes of determining competitive status, American-owned firms shall receive a ten (10) percent price preference reduction, provided that two prospective responsible bidders/offerors submit a bid/offer.

636.104–71 Omnibus Diplomatic Security and Antiterrorism Act.

(a) *Preference for United States contractors.* The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399; 22 U.S.C. 4852) limits certain construction projects abroad to United States persons or qualified United States joint venture persons. The Omnibus Diplomatic Security and Antiterrorism Act of 1986 applies to the following, as determined by the Assistant Secretary for Diplomatic Security:

(1) Diplomatic construction or design projects abroad exceeding $10 million; or,

(2) Diplomatic construction projects abroad at any dollar amount that involve technical security, unless the project involves low-level technology.

(b) *Exception.* This preference shall not apply with respect to any diplomatic construction or design project in a foreign country whose statutes prohibit the use of United States contractors on such projects.

(c) *Subcontracting limitation.* With respect to a diplomatic construction project, a prime contractor may not subcontract more than 50 percent of the total value of the contract for that project.

67. Section 636.202 is added to read as follows:

636.202 Specifications.

(d) The Director/Chief Operating Officer of the Bureau of Overseas Building Operations is the head of the agency for the purposes of FAR 36.202(d)(3) and (4).

68. Section 636.513 is amended by adding the following sentence to the end of paragraph (a):

636.513 Accident prevention.

(a) * * * The contracting officer shall confer with OBO/OM/SHEM if there are any questions on any factors listed in paragraph (4) of the clause, or if the contracting officer has any questions regarding construction safety issues.

69. Section 636.570 is added to read as follows:

636.570 Additional DOSAR provisions.

(a) The contracting officer shall insert the provision at 652.236–71, Foreign Service Buildings Act, As Amended, in all contracts exceeding $5,000,000 for the construction, alteration, or repair of buildings and grounds overseas, unless:

(1) An international agreement with or laws of the host country government permits or limits the participation to host-country firms; or,

(2) The Secretary of State determines that it is necessary to the interest of bilateral relations or to carry out the project to either permit or limit the participation to host-country firms; or,

(3) The provision at DOSAR 652.236–72 applies.

(b) The contracting officer shall insert the provision at 652.236–72, Statement of Qualifications for the Omnibus Diplomatic Security and Antiterrorism Act, in all diplomatic construction or design solicitations exceeding $10 million; or, diplomatic construction projects abroad at any dollar amount that involve technical security, unless the project involves low-level technology, as determined by the Assistant Secretary of Diplomatic Security.

70. Section 636.602–4 is removed.

PART 637—SERVICE CONTRACTING

71. Section 637.102, and section 637.102–70 are added to read as follows:

637.102 Policy.

637.102–70 Special requirements for the acquisition of local guard services overseas.

(a) *Policy.* Section 136 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864) encourages the participation of United States persons and qualified United States joint venture persons in local guard contracts overseas under diplomatic security programs.

(b) *Evaluation preference.* For purposes of determining competitive status, proposals of United States persons and qualified United States joint venture persons shall receive a ten (10) percent price preference reduction.

72. Section 637.104–70 is amended by removing the words ''Office of Foreign Buildings'' and inserting the words ''Bureau of Overseas Buildings Operations'' in their place, and by removing the words ''and the Moscow Embassy Buildings Control Office'' in paragraph (f).

73. Section 637.110 is amended by adding a new paragraph (d) to read as follows:

637.110 Solicitation provisions and contract clauses.

* * * * *

(d) The contracting officer shall insert the provision at 652.237–73, Statement of Qualifications for Preference as a U.S. Person, in all overseas local guard solicitations.

74. A new Subpart 637.6, consisting of section 637.601, is added to read as follows:

Subpart 637.6—Performance-Based Contracting

637.601 General.

It is the Department's policy that all new service contracts be performance-based, with clearly defined deliverables and performance standards. Any deviations from this policy shall be fully justified in writing and approved by the Departmental Competition Advocate.

Subchapter G—Contract Management

PART 642—CONTRACT ADMINISTRATION AND AUDIT SERVICES

75. Section 642.271 is redesignated as section 642.272. A new section 642.271 is added to read as follows:

642.271 Government Technical Monitor (GTM).

(a) *Policy.* The contracting officer may appoint a Government Technical Monitor (GTM) to assist the Contracting Officer's Representative (COR) in monitoring a contractor's performance. The contracting officer may appoint a GTM because of physical proximity to the contractor's work site, or because of special skills or knowledge necessary for monitoring the contractor's work. The contracting officer may also appoint a GTM to represent the interests of another requirements office or post concerned with the contractor's work. A GTM shall be a direct-hire U.S. Government employee.

76. Subpart 642.15, consisting of sections 642.1503 and 642.1503–70, is added to read as follows:

Subpart 642.15—Contractor Performance Information 642.1503 Procedures.

642.1503–70 Contractor Performance System (CPS).

(a) The Department of State subscribes to the Contractor Performance System (CPS) maintained by the National Institutes of Health. CPS is an Internet-based tool allowing contracting officers to input past performance information and view past performance information input by other contracting officers in other locations and agencies.

(b) All DOS contracting officers with access to the Internet shall use CPS to evaluate contractor's past performance for all contracts exceeding $100,000, including options. Contracting officers shall also use the CPS to evaluate the past performance of offerors on all competitive negotiated acquisitions exceeding $100,000, including options, unless the contracting officer documents in the contract file why past performance is not an appropriate evaluation factor. The CPS may also be used for evaluating acquisitions not exceeding $100,000 to conform to the general principle of considering past performance in all acquisitions.

(c) Form DS–1771, *Contractor Past Performance Evaluation,* shall be used only:

(1) When the CPS is temporarily unavailable. When the CPS becomes available, data from any DS–1771 created in the interim shall be promptly entered into the CPS; or

(2) At overseas locations where access to the Internet is not practicable.

(d) Heads of contracting activities shall send a list of the names, work addresses, and phone numbers of all acquisition personnel whom they wish to have access to the CPS to A/LM/AQM.

PART 651—USE OF GOVERNMENT SOURCES BY CONTRACTORS

77. Section 651.701 is amended by removing the last sentence of paragraph (c).

Subchapter H—Clauses and Forms

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

78. Section 652.216–70 is amended by revising the clause date and by revising paragraph (b) to read as follows:

652.216–70 Ordering—Indefinite-Delivery Contract.

* * * * *

Ordering—Indefinite-Delivery Contract (MO/YR)

* * * * *

(b) The DS–2076, *Purchase Order, Receiving Report and Voucher,* and DS–2077, *Continuation Sheet.*

79. Section 652.219–70 is revised to read as follows:

652.219–70 Department of State Subcontracting Goals.

As prescribed in 619.708–70, insert a provision substantially the same as follows:

Department of State Subcontracting Goals (MO/YR)

(a) The offeror shall provide a Small, Small Disadvantaged, Woman-Owned Small, HUBZone Small, and Service-Disabled Veteran-Owned Small Enterprise Subcontracting Plan that details its approach to selecting and using Small, Small Disadvantaged, Woman-Owned Small, HUBZone Small, and Service-Disabled Veteran-Owned Small Business Enterprises.

(b) For the fiscal year [insert appropriate fiscal year], the Department's subcontracting goals are as follows:

(1) Goal for subcontracting to SB: _____

(2) Goal for subcontracting to SDB: _____

(3) Goal for subcontracting to SWB: _____

(4) Goal for subcontracting to HUBZone Firms: _____

(5) Goal for subcontracting to SDVO: _____

(6) Omnibus goals (if applicable):

(i) 10% to minority business

(ii) 10% to small business

(End of provision)

80. Section 652.219–72 is added to read as follows:

652.219–72 Department of State Mentor-Protégé Program.

As prescribed in 619.202–70(o)(1), insert the following provision:

Department of State Mentor-Protégé Program (MO/YR)

(a) Large and small businesses are encouraged to participate in the Department of State Mentor-Protégé Program. Mentor firms provide eligible small business protégés with developmental assistance to enhance their business capabilities and ability to obtain Federal contracts.

(b) Mentor firms are large prime contractors or eligible small businesses capable of providing developmental assistance. Protégé firms are small businesses, as defined in 13 CFR parts 121, 124, and 126.

(c) Developmental assistance is technical, managerial, financial, and other mutually beneficial assistance that aids protégés. Firms interested in participating in the program are encouraged to contact the Department of State OSDBU for further information.

(End of provision)

81. Section 652.219–73 is added to read as follows:

652.219–73 Mentor Requirements and Evaluation.

As prescribed in 619.202–70(o)(2), insert the following clause:

Mentor Requirements and Evaluation (MO/YR)

(a) Mentor and protégé firms shall submit an evaluation to the Department of State's OSDBU at the conclusion of the mutually agreed upon program period, the conclusion of the contract, or the voluntary withdrawal by either party from the program, whichever occurs first. At the conclusion of each year in the mentor-protégé program, the prime contractor and protégé will formally brief the Department of State Mentor-Protégé Program Manager regarding program accomplishments under their mentor-protégé agreement.

(b) A mentor or protégé shall notify the OSDBU and the contracting officer, in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the program. A mentor firm shall notify the OSDBU and the contracting officer upon receipt of a protégé's notice of withdrawal from the program.

(End of clause)

82. Section 652.226–70 is removed.

83. Section 652.228–70 is removed and reserved.

84. Section 652.236–70 is amended—

a. By revising the date of the clause;

b. By revising paragraph (a)(4) to read as set forth below; and

c. By revising paragraph (d)(1) to read as set forth below:

652.236–70 Accident Prevention.

* * * * *

Accident Prevention (MO/YR)

(a) * * *

(4) For overseas construction projects, the contracting officer shall specify in writing additional requirements regarding safety if the work involves:

(i) Scaffolding;

(ii) Work at heights above two (2) meters;

(iii) Trenching or other excavation greater than one (1) meter in depth;

(iv) Earth moving equipment;

(v) Temporary wiring, use of portable electric tools, or other recognized electrical hazards. Temporary wiring and portable electric tools require the use of a ground fault circuit interrupter (GFCI) in the affected circuits; other electrical hazards may also require the use of a GFCI;

(vi) Work in confined spaces (limited exits, potential for oxygen less than 19.5 percent or combustible atmosphere, potential for solid or liquid engulfment, or other hazards considered to be immediately dangerous to life or health such as water tanks, transformer vaults, sewers, cisterns, etc.);

(vii) Hazardous materials—a material with a physical or health hazard including but not limited to flammable, explosive, corrosive, toxic, reactive or unstable, or any operations which create any kind of contamination inside an occupied building such as dust from demolition activities, paints, solvents, etc.; or

(viii) Hazardous noise levels.

* * * * *

(d) * * *

(1) Submit a written plan to the contracting officer for implementing this clause. The plan shall include specific management or technical procedures for effectively controlling hazards associated with the project; and

* * * * *

85. Section 652.236–71 is added to read as follows:

652.236–71 Foreign Service Buildings Act, As Amended.

As prescribed in 636.570(a), insert the following provision:

Foreign Service Buildings Act, As Amended (MO/YR)

(a) This solicitation is subject to Section 11 of the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 302). This statute limits competition under this solicitation to:

(1) American-owned firms, as described in paragraph (b) of this provision; and

(2) Firms from countries that permit or agree to permit substantially equal access to American firms for comparable diplomatic and consular building projects.

(b) To qualify as an American-owned firm for purposes of this solicitation, the bidder/offeror must demonstrate evidence of:

(1) Performance of similar construction work in the United States; and

(2) Either—

(i) Ownership in excess of 50% by U.S. citizens or permanent residents; or

(ii) Incorporation in the United States for more than three (3) years and employment of U.S. citizens or permanent residents in more than half of the company's permanent full-time professional and managerial positions in the United States.

(c) For purposes of determining competitive status, offers submitted by American-owned firms shall be reduced by ten (10) percent, provided that two responsible bidders/offerors submit a bid/offer.

(d) *Evidence of qualification.* (1) Performance of similar construction work in the United States. The bidder/offeror must describe below one or more similar projects completed in the United States. For each project, provide the following information:

Location: _____

(city and State) _____

_____

Complexity: _____

_____

(office building, etc.)

Type of construction: _____

_____

Value of project: _____

_____

Location: _____

_____

(city and State)

Complexity: _____

_____

(office building, etc.)

Type of construction: _____

_____

Value of project: _____

_____

Location: _____

_____

(city and State)

Complexity: _____

_____

(office building, etc.)

Type of construction: _____

_____

Value of project:

_____

If the bidder/offeror's participation was as a partner or co-venture, indicate the percentage of the project performed by the bidder/offeror: ____ %

(2) Corporate location or ownership.

(i) The bidder/offeror certifies that it □ is □ is not owned in excess of fifty (50) percent by United States citizens or permanent residents.

(ii) The bidder/offeror certifies that it □ has □ has not been incorporated in the United States for more than three years and that it □ employs □ does not employ United States citizens or permanent residents in more than half of its permanent full-time professional and managerial positions in the United States.

(e) By signing this bid/offer, the bidder/offeror certifies to the best of its knowledge, all of the representations and certifications provided in this provision are accurate, current and complete.

(End of provision)

86. Section 652.236–72 is added to read as follows:

652.236–72, Statement of Qualifications for the Omnibus Diplomatic Security and Antiterrorism Act.

As prescribed in 636.570(b), insert the following provision:

Statement of Qualifications for the Omnibus Diplomatic Security and Antiterrorism Act (MO/YR)

(a) This solicitation is subject to Section 402 and Section 406(c) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (P.L. 99–399; 22 U.S.C. 4852). The Act limits certain construction projects abroad to United States persons or United States joint venture persons, and excludes organizations that have business arrangements with Libya. This Statement of Qualifications shall be used to determine if a bidder/offeror meets the definition of a ''United States person'' or a ''United States joint venture person'' and whether they have any business arrangements with Libya that may disqualify them from participating in this solicitation.

(b) *Definition.* As used in this provision—

U.S. person means a company, partnership, or joint venture that the Government determines, after consideration of all available information, including but not limited to that provided by the bidder/offeror in response to this solicitation, to be qualified pursuant to Section 402.

(c) *Representation.* The bidder/offeror represents as part of its bid/offer that it □ does, □ does not meet the qualifications as a U.S. person as set forth in Section 402 of the Act.

[Complete a Statement of Qualifications for Purposes of Determining Status as a U.S. Person if the offeror represents that it is eligible. See paragraph (d) of this provision.]

Warning: Any material misrepresentation made in the Statement of Qualifications may be the basis for disqualification of a bidder/offeror and reference for consideration of suspension or debarment or for prosecution under Federal law (cf. 18 U.S.C. 1001). Bidder/offeror qualifications will be determined primarily on the basis of information submitted in the Statement of Qualifications, including attachments thereto, but the Government may, at its discretion, rely on information contained elsewhere in the bidder's/offeror's bid/proposal or obtained from other sources.

(d) *Statement of Qualifications for Purposes of Determining Status as a U.S. Person* (22 U.S.C. 4852). A bidder/offeror that represents that it is a U.S. person must provide the following information.

Statement of Qualifications for Purposes of Determining Status as a U.S. Person (22 U.S.C. 4852)

Name and address of U.S. person organization providing this information:

_____

_____

_____

Introduction. Section 402 of the Omnibus Diplomatic Security and Antiterrorism Act (Pub. L. 99–399) provides that a ''United States person'' or a ''qualified United States joint venture'' must meet certain requirements, listed in sections 402(c)(2) and

(3) of the Act, to be eligible to compete. To assist business entities to determine whether they qualify as a U.S. person or U.S. joint venture person, guidance is hereby provided. For ease of reference, the statutory language is quoted immediately before the definitions that apply to it. Space for the required information is provided immediately following each definition.

Note: The Statement of Qualifications shall provide information correctly applicable to the U.S. person whose qualifications are being certified, and shall not include information pertaining to corporate affiliates or subsidiaries. Organizations that wish to use the experience or financial resources of any other legally dependent organization or individual, including parent companies, subsidiaries, or other related organizations, must do so by way of a joint venture. A prospective bidder/offeror may be an individual organization or firm, a formal joint venture in which the co-venturers have reduced their arrangement to writing, or a *de facto* joint venture where no formal agreement has been reached, but the offering entity relies upon the experience of a related U.S. firm that guarantees performance. To be considered a ''qualified United States joint venture person,'' the joint venture must have at least one firm or organization that itself meets all the requirements of a U.S. person listed in Section 402. By signing this bid/proposal, the U.S. person co-venturer agrees to be individually responsible for performance of the contract, notwithstanding the terms of any joint venture agreement.

1. *Section 402(c)(2)(A):* ''The term ''United States person'' means a person which—(A) is incorporated or legally organized under the laws of the United States, including the District of Columbia, and local laws.''

Definitions for purposes of Section 402 determinations of eligibility—

Incorporated means the successful *de jure* incorporation of a business organization pursuant to the laws of any United States jurisdiction or component thereof.

Legally organized means the legally recognized existence of an organization other than a *de jure* corporation (*e.g.*, a partnership) under the laws of any United States jurisdiction or component thereof. Only organizations that have a legal status, including the right to bring suit, to sign contracts, and to hold property under the law of the jurisdiction where they are doing business will qualify as legally organized. A natural person who is a United States citizen acting in her or her entrepreneurial capacity will be deemed to be a ''person legally organized'' within the scope of this definition, provided that the prospective bidder/offeror holds all required licenses to do business in the jurisdiction where he or she is located.

United States means any jurisdiction that is one of the fifty States, the District of Columbia, a United States territory, a United States possession, or the Commonwealths of Puerto Rico and the Northern Marinara Islands.

Question 1. The organization seeking eligibility under Section 402 is □ incorporated or is □ legally organized under the laws of what jurisdiction?

_____

2. *Section 402(c)(2)(B):* ''The term 'United States person' means a person which—(B) has its principal place of business in the United States.''

Definitions for purposes of Section 402 determinations of eligibility—

Principal place of business means the main location of the prospective bidder/offeror. For purposes of this section, a prospective bidder/offeror shall identify only one principal place of business, and such location shall include at least the offices of the chief operating officer and headquarters staff. The named location must be a United States jurisdiction from which a tax return has been filed or will be filed during the calendar year in which the prospective bidder/offeror submits this bid/offer.

United States means any jurisdiction that is one of the fifty States, the District of Columbia, a United States territory, a United States possession, or the Commonwealths of Puerto Rico and the Northern Mariana Islands.

Question 2(a). The organization seeking eligibility has its principal place of business in what city and state?

_____

Question 2(b). What kind of tax return was or will be filed, and in what jurisdiction, during the current calendar year?

(i) Jurisdiction: _____ (*e.g.*, federal, state, city)

(ii) Type of return (*e.g.*, income tax, franchise tax, etc.). Include all that apply: _____

_____

_____

3. *Section 402(c)(2)(C):* 'The term ''United States person' means a person which has been incorporated or legally organized in the United States—

(i) for more than 5 (five) years before the issuance date of the invitation for bids or request for proposals with respect to a construction project under subsection (a)(1); and,

(ii) for more than 2 (two) years before the issuance date of the invitation for bids or request for proposals with respect to a construction or design project abroad that involves technical security under subsection (a)(2).''

Definitions for purposes of Section 402 determinations of eligibility—

Has been incorporated or legally organized means that the organization can show continuity as an ongoing business. Organizations that have changed only their names meet the continuity requirement of this subsection. Organizations that have been bought, sold, merged, or otherwise substantially altered or enlarged their principal business activities will have the burden of proving that there have been ongoing operations by the same business entity for the required period of time. If the successor entity has acquired all of the assets and liabilities of the predecessor business and the predecessor business has no further existence, the successor may claim the incorporation date of the predecessor. In any other circumstance, the prospective bidder/offeror must show that the law of the jurisdiction in which it operates regards the prospective bidder/offeror as the complete successor in interest of the predecessor business for purpose of contractual obligations.

Issuance date means the date in Block 3 of the Standard Form 1442 accompanying this solicitation.

Years means calendar years measured from day of the month to day of the month. For example, January 1, 2002 through December 31, 2002 is one calendar year, as is July 1, 2002 through July 1, 2003.

Question 3:

(i) On what date was the organization seeking eligibility incorporated or legally organized? _____

(ii) If this date is less than the required number of years before the issuance date, on the basis of what documentation does the organization seeking eligibility claim that it has been in business for the requisite period of time?_____ (Identify, and forward copies as an Attachment to this Statement. This material may include such items as certificates of incorporation, partnership agreements, resolutions of boards of directors, *etc.*).

4. *Section 402(c)(2)(D):* ''The term 'United States person' means a person which has performed within the United States or at a United States diplomatic or consular establishment abroad administrative and technical, professional, or construction services similar in complexity, type of construction, and value to the contract being bid.''

Definitions for purposes of Section 402 determination of eligibility—

Administrative and technical, professional, or construction services means the kind of work in which the prospective bidder/offeror is interested. If the proposed contract is for construction management services, the prospective bidder/offeror will be expected to demonstrate construction management expertise. In general, 'administrative' means the capacity or ability to manage; 'technical' means the specific skills peculiar to the type of work required; 'professional' means expert services resulting from advanced training in the type of work required; and 'construction' experience if it has not directly performed all of the actual construction activities. Thus, an entity whose only construction work experience was performed by its legally distinct subsidiary or parent will not be considered to have construction experience.

Complexity means the physical size and technical size and demands of the project.

Performed means projects that have been fully completed by the prospective bidder/offeror and accepted by the owner or other party to the transaction. Projects still in progress have not yet been performed for purposes of this definition.

Type of construction means the overall nature of the facilities to be built, including the kinds of materials to be used. Thus, if the contract will require the construction of a multi-story office building, the prospective bidder/offeror will be expected to demonstrate experience with facilities of this type.

Value means the total contract price of the project, not to the profit or loss to the bidder/offeror.

Within the United States means a United States jurisdiction that is the place where the

subject matter of the contract or other arrangement was in fact completed. It does not mean the place where the contract or other arrangement was negotiated or signed. The term ''United States'' means any jurisdiction that is one of the 50 states, the District of Columbia, a United States territory, a United States possession, or the Commonwealth of Puerto Rico and the Northern Mariana Islands.

Question 4: List on this page, and an attachment (if necessary), one or more similar projects completed by the prospective bidder/offeror. For each project, provide the following information:

Location: _____
(city and state, or country)
Type of service: _____
(administrative, etc.)
Complexity: _____
(office building, etc.)
Type of construction: _____
Value of project: _____

If the prospective bidder/offeror's participation was as a partner or co-venturer, indicate the percentage of the project performed by the prospective offeror: _____%

5. *Section 402(c)(2)(E):* ''The term 'United States person' means a person which—with respect to a construction project under subsection (a)(1)—has achieved a total business volume equal to or greater than the value of the project being bid in 3 years of the 5-year period before the date specified in subparagraph (C)(i).''

Definitions of purposes of Section 402 determination of eligibility—

3 years of the 5-year period before the date specified in subparagraph (C)(i) means the three to five calendar year period immediately preceding the issuance date of this solicitation.

Total business volume means the U.S. dollar value of the gross income or receipts reported by the prospective bidder/offeror on its annual federal income tax returns.

Years means the business year of the prospective bidder/offeror, as reflected on its annual federal income tax returns.

Question 5: Please complete the information below for at least three of the five listed years.

The gross receipts for the business year: (list year and amount)
The gross receipts for the business year: (list year and amount)
The gross receipts for the business year: (list year and amount)
The gross receipts for the business year: (list year and amount)
The gross receipts for the business year: (list year and amount)

6. *Section 402(c)(2)(F):* ''The term 'United States person' means a person which—(i) Employs United States citizens in at least 80 percent of its principal management positions in the United States; (ii) employs United States citizens in more than half of its permanent, full-time positions in the United States; and (iii) will employ United States citizens in at least 80 percent of the supervisory positions on the foreign buildings office project site.''

Definitions for purposes of Section 402 determinations of eligibility—

In the United States refers to those positions that the prospective bidder/offeror maintains within all jurisdictions which are one of the 50 states, the District of Columbia, a United States territory, a United States possession, or the Commonwealths of Puerto Rico and the Northern Mariana Islands.

Permanent, full-time positions means positions with the prospective bidder/offeror that are intended to be indefinite, as opposed to limited, seasonal, or project-duration periods. The term ''full-time'' refers to positions in which the occupants are expected to and ordinarily work 40 hours a week. The term ''permanent, full-time positions'' covers the portion of the prospective bidder's/offeror's workforce that continues to be employed without regard to the fluctuating requirements of production or projects.

Principal management positions refers to chief operating officer and those management officials reporting directly to him or her. In the case of a partnership, the term refers to every general partner. In the case of a corporation, the term refers to those officers of the corporation who are active in running its day-to-day operations. Members of corporation boards of directors who do not have operational responsibilities do not occupy ''principal management positions'' simply by virtue of their service on the board. In all cases, the term ''principal management positions'' also includes the position or positions held by the individual or individuals who will have primary corporate management oversight responsibility for this contract if the prospective bidder/offeror is awarded the contract. Each prospective bidder/offeror is responsible for listing all of its principal management positions and identifying their current occupants by name and citizenship.

Supervisory positions means all positions with significant authority to direct the work of others as well as those for which access to classified or controlled documents is required. Such positions will be identified in each contract.

United States citizen means natural persons with United States citizenship by virtue either of birth or of naturalization.

Question 6(a): The bidder/offeror has the following staff:

(i) Principal management positions in the United States:

Chief Operating Officer:

_____
(name)
_____
(citizenship)

(ii) For each individual reporting directly to the above-named Chief Operating Officer, list position, name, and citizenship:

Position	Name	Citizenship

(iii) Individual(s) expected to have primary management oversight responsibility for contract if it is awarded:

_____
(name)
_____
(citizenship)

Question 6(b): Number of permanent, full-time positions in the United States:_____

Question 6(c): Number of United States citizens currently employed in permanent, full-time positions in the United States:_____

Question 6(d): Certification of intent to employ U.S. citizens in a minimum of 80 percent of the supervisory positions identified by the Government on this project:

I so certify: _____
(signature)
_____
(name typed or printed)
_____
(position)
_____
(date)

7. Section 402(c)(2)(G): ''The term ''United States person'' means a person which has the existing technical and financial resources in the United States to perform this contract.''

Definitions for purposes of Section 402 determinations of eligibility—

Existing technical and financial resources means the capability of the prospective bidder/offeror to mobilize adequate staffing and monetary arrangements from within the United States sufficient to perform the contract. Adequate staffing levels may be demonstrated by presenting the resumes of current United States citizens and resident aliens with skills and expertise necessary for the work in which the prospective bidder/offeror is interested or some other indication of available United States citizen or permanent legal resident human resources. Demonstration of adequate financial resources must be issued by entities that are subject to the jurisdiction of United States courts and have agents located within the United States for acceptance of service of process.

Question 7: Submit, as an Attachment to this Statement, materials demonstrating existing technical and financial resources in the United States.

8. *Section 402(c)(3):* ''The term ''qualified United States joint venture person'' means a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture.''

Definitions for purposes of Section 402 determinations of eligibility—

Assets means tangible and intangible things of value conveyed or made available to the joint venture by the co-venturers.

Joint venture means a formal or de facto arrangement by and through which two or more persons or entities associate for the purpose of carrying out the prospective contract. Prospective bidders/offerors are advised that a joint venture may not be acceptable to projects requiring a Department of Defense facility security clearance because each co-venturer may post particular problems in obtaining security clearances. To be acceptable, all members of a joint venture must be individually and severally liable for the full performance of and resolution of any and all matters arising out of the contract, notwithstanding any provision of the joint venture agreement of law of the jurisdiction under which the joint venture was created.

Question 8(a): The bidder/offeror ☐ is ☐ is not a joint venture.

Question 8(b): If the bidder/offeror is a joint venture, the U.S. person participant is:

(name) _____

(address) _____

Question 8(c): If the bidder/offeror is a joint venture, the names and countries of citizenship for all co-venturers are as follows:

(name) _____

(citizenship) _____

(name) _____

(citizenship) _____

(name) _____

(citizenship) _____

Question 8(d): If the bidder/offeror is a joint venture, the U.S. person will own at least 51 percent of the assets of the joint venture.

I so certify: _____

(signature)

_____

(name typed printed)

_____

(position)

_____

(title)

9. *Libya.* Section 406(c) states ''No person doing business with Libya may be eligible for any contract awarded pursuant to this Act.''

Definitions for purposes of section 406 eligibility—

Contract awarded establishes a time frame for the bar on doing business with Libya. The time during which a relationship with Libya is prohibited begins on the date the section 406 information is submitted. For bidders/offerors not selected for contract award, the prohibition ceases on the date of award. For the bidder/offeror that is awarded the contract, the bar continues through the life of the contract, ending on the date of final acceptance of the work.

Doing business means all transactions of any kind agreed to or performed after the earlier of the date on which a bid/proposal is submitted to the Department of State under this solicitation or on which the contract, subcontract, program, or other arrangement with the Department of State is awarded or becomes effective. Any transaction commenced prior to the date of submittal or award and not yet completed must be reported. Transactions that call for continued or future performance shall be disqualifying. Transactions that have been completely performed but for which payment has not yet been made must be reported, but shall not be disqualifying unless any event other than payment of a previously-agreed upon sum occurs. Examples of disqualifying actions include any pending litigation arising out of business transactions with Libya, renegotiation of the terms of a loan, and refinancing an amount owed or owing.

Person means any individual or legal entity, whether U.S. or foreign. Subcontractors and others who do not have a direct contractual relationship with the United States are not covered by this section.

With Libya means transactions between any person and the Government of Libya, government entities of Libya, or any other organization wholly owned or effectively controlled by the Government of Libya. It is the responsibility of the entity submitting section 406 information to disclose existing relationships with the entities that it has reasonable grounds to believe are or may be Libyan. In case of doubt or dispute, the Department of State shall determine, at its sole discretion, whether any organization is a governmental entity of Libya, wholly owned by the Government of Libya, or effectively controlled by the Government of Libya.

Certification

Based on the foregoing, I hereby certify on behalf of this organization that it ☐ is ☐ is not doing business with Libya as those terms are used in section 406(c) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(e) *Signature:* By signing this document, the offeror indicates that to the best of his or her knowledge, all of the representations and certifications provided in response to the questions contained in this Statement of Qualifications are accurate, current, and complete and that the offeror is aware of the penalty prescribed in 18 U.S.C. 1001 for making false statements.

(End of provision)

87. Section 652.237–71 is revised to read as follows:

652.237–71 Identification/Building Pass.

As prescribed in 637.110(b), insert the following clause.

Identification/Building Pass (MO/YR)

(a) *Contractors working in domestic facilities who already possess a security clearance.*

(1) The contractor shall obtain a Department of State building pass for all employees performing under this contract who require frequent and continuing access to Department of State facilities. The Bureau of Diplomatic Security, Office of Domestic Facilities Protection, shall issue passes. They shall be used for the purpose of facility access only, and shall not be used for any other purpose.

(2) The contractor shall submit a Visitor Authorization Request (VAR) Letter to the Bureau of Diplomatic Security, Information Security Programs Division, Industrial Security Branch (DS/ISP/INB) on its cleared employees containing the following information:

(i) Contractor employee's full name, social security number, and date of birth;

(ii) Contractor's company name;

(iii) Security clearance level;

(iv) Date the clearance was granted;

(v) Name of the contractor's Facility Security Officer;

(vi) Contracting Officer's Representative (COR); and

(vii) Contract number.

(3) DS/ISP/INB shall process and approve the VAR letter, if appropriate. The approved VAR letter shall be forwarded to the contractor for their records.

(4) The contractor employee shall hand-carry the following documentation to the Building Pass Office, Department of State, 520 23rd Street, NW., Courtyard of Columbia Plaza, Washington, DC:

(i) A Department of State sponsorship letter from the COR, addressing the following:

(A) The purpose for which the pass is being requested;

(B) The employee's valid security clearance level (reflected on the VAR);

(C) Contract number and period of performance;

(D) Type of access (24/7, normal business hours, escort authority or no escort authority granted); and

(E) Expiration date of building pass (1 year or 3 years);

(ii) Letter on company letterhead to accompany the application, containing the following information:

(A) The purpose for which the pass is being requested;

(B) Verification of employment;

(C) The employee's valid security clearance level; and

(D) Contract number and period of performance;

(iii) The DS–1838, *Request for Building Pass Identification Card.*

(b) *Contractors working in domestic facilities where security clearances are not required.*

(1) The contractor shall obtain a Department of State building pass for all employees performing under this contract who require frequent and continuing access to Department of State facilities. The Bureau of Diplomatic Security, Office of Domestic Facilities Protection, shall issue passes. They shall be used for the purpose of facility access only, and shall not be used for any other purpose.

(2) The contractor shall submit the following paperwork, in original, to the Bureau of Diplomatic Security, Information Security Programs Division, Industrial Security Branch (DS/ISP/INB):

(i) SF–85P, *Questionnaire for Public Trust Positions;*

(ii) SF–85P/S, *Supplemental Questionnaire for Selected Positions;* and

(iii) DOS Credit Release, which may be obtained from DS/ISP/INB via mail or facsimile.

(3) DS/ISP/INB shall conduct a preliminary background check. If the background check is favorable, DS/ISP/INB will forward a letter to the company Facility Security Officer (FSO) notifying them that the individual may proceed to the Building Pass Office to continue the badging process. DS/ISP/INB will forward a copy of this letter to the Building Pass Office.

(4) When a contractor employee is approved to receive a building pass, he/she shall hand-carry the following documentation to the Contractor Building Pass Office, Department of State, 520 23rd Street, NW., courtyard of Columbia Plaza, Washington, DC. :

(i) A Department of State sponsorship letter from the COR, addressing the following:

(A) The purpose for which the pass is being requested;

(B) Whether or not the employee has a valid security clearance;

(C) Contract number and period of performance;

(D) Type of access (24/7, normal business hours, escort authority or no escort authority granted); and

(E) Expiration date of building pass (1 year or 3 years);

(ii) DS Form 1838, *Request for Building Pass Identification Card;*

(iii) Letter on company letterhead to accompany the application, containing the following information:

(A) The purpose for which the pass is being requested;

(B) Verification of employment;

(C) Whether or not the applicant has a valid security clearance; and,

(D) Contract number and period of performance;

(iv) Original SF–85P or a copy of the SF–85P, with an original signature and current date;

(v) Original SF–85P/S or a copy of the SF–85P/S, with an original signature and current date;

(vi) Copy of the DOS Credit Release, with an original signature and current date; and,

(vii) Original proof of U.S. citizenship, such as a birth certificate or valid U.S. passport. Non-U.S. citizens must submit a valid photo Immigration and Naturalization Service Employment Authorization Document (INS EAD).

(5) Applicants shall be fingerprinted at the Building Pass Office and the process for a building pass shall be initiated. The approval process shall take at least 48 hours. Applicants shall not return to the Building Pass Office until they receive notification from DS/ISP/INB that the process is complete. Once DS/ISP/INB receives notification from the Building Pass Office that a building pass can be issued, DS/ISP/INB shall notify the FSO and the COR that the applicant has been approved for initial contract performance.

(c) *Contractors working in overseas facilities.* Contractors shall submit appropriate documentation to obtain building passes as specified in the contract.

(d) All contractor employees, both domestic and overseas, shall wear the passes in plain sight at all times while in Department of State buildings. All contractor employees shall show their passes, where appropriate, when entering these buildings and upon request of uniformed guards or any other authorized personnel.

(e) All passes shall be returned to the COR upon separation of the employee, or expiration or termination of the contract. Final payment under this contract shall not be made until all passes are returned to the COR.

(End of clause)

88. Section 652.237–72 is amended by revising the date of the clause and by removing the words ''the preceding Friday is observed; when any such day falls on a Sunday'' and by inserting the words ''or Sunday'' in their place in the first sentence of paragraph (b).

89. Section 652.237–73 is added to read as follows:

652.237–73 Statement of Qualifications for Preference as a U.S. Person.

As prescribed in 637.110(d), insert the following provision:

Statement of Qualifications for Preference as a U.S. Person (MO/YR)

(a) This solicitation is subject to section 136 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864). The Act encourages the participation of United States persons and qualified United States joint venture persons in the provision of local guard services overseas, and provides for a preference for eligible offers.

(b) *Definitions.* As used in this provision—

Eligible offer means an offer that (1) Is otherwise responsive to the solicitation; and (2) contains a fully prepared Statement of Qualifications (see paragraph (d) of this provision), which upon review is determined by the Government to meet the requirements of Section 136 for assignment of preference as a U.S. person.

Preference means subtraction by the Government of ten percent (10%) from the total evaluated price of an offer.

U.S. person means a company, partnership, or joint venture that the Government determines, after consideration of all available information, including but not limited to that provided by the offeror in response to the solicitation, to be qualified for assignment of preference pursuant to Section 136.

(c) *Representation.* The offeror represents as part of its offer that it □ is, □ is not eligible for preference as a U.S. person. [*Complete a Statement of Qualifications for Purposes of Obtaining Preference as a U.S. Person if the offeror represents that it is eligible. See paragraph (d) of this provision.*]

Warning: Any material misrepresentation made in the Statement of Qualifications may be the basis for disqualification of an offeror and reference for consideration of suspension or debarment or for prosecution under Federal law (*cf.* 18 U.S.C. 1001). Offeror qualifications will be determined primarily on the basis of information submitted in the Statement of Qualifications, including Attachments thereto, but the Government may, at its discretion, rely on information contained elsewhere in the offeror's proposal or obtained from other sources.

(d) *Statement of Qualifications for Purposes of Obtaining Preference as a U.S. Person (22 U.S.C. 4864).* An offeror that represents that it is eligible for preference as a U.S. person must provide the following information. This Statement of Qualifications must be a complete and certified document, and submitted as a separate Volume 5, with all necessary attachments, as defined in Section L of this solicitation.

STATEMENT OF QUALIFICATIONS FOR PURPOSES OF OBTAINING PREFERENCE AS A U.S. PERSON (22 U.S.C. 4864)

Name and address of U.S. person organization providing this information:

_____

_____

Introduction. Section 136 of the Foreign Relations Authorization Act for Fiscal Years 1990 and 1991, Public Law 101–246 (22 U.S.C. 4864), as amended, provides that a ''United States person'' or a ''qualified United States joint venture'' must meet certain requirements, listed in the Act, to be eligible for the statutory preference. To assist business entities to determine whether they qualify as a U.S. person or U.S. joint venture person entitled to preference under section 136, guidance is hereby provided. Only those prospective offerors submitting a properly completed and certified Volume 5 with their initial proposals will be considered in the determination of eligibility for assignment of preference as a U.S. person or U.S. joint venture person. For ease of reference, statutory language is quoted immediately before the definitions that apply to it. Space for the required information is provided immediately following each definition.

Note: The Statement of Qualifications shall provide information correctly applicable to the U.S. person whose qualifications are being certified, and shall not include information pertaining to corporate affiliates or subsidiaries. Organizations that wish to use the experience or financial resources of another organization or individual, including parent companies, subsidiaries, or local national or offshore organizations, must do so by way of a joint venture. The contract resulting from this solicitation shall not allow subcontracting. A prospective offeror may be a sole proprietorship, a formal joint venture in which the co-venturers have reduced their arrangement to writing, or a de facto joint venture with no written agreement. To be considered a ''qualified joint venture person,'' the joint venture must have at least one firm or organization that itself meets all the requirements of a U.S. joint venture person listed in Section 136. By signing this proposal, the U.S. person co-venturer agrees to be individually responsible for performance of the contract, notwithstanding the terms of any joint venture agreement.

1. Section 136(d)(1): ''The term 'United States person' means a person which—(A) is incorporated or legally organized under the laws of the United States, including the laws of any State, locality, or the District of Columbia.''

Definitions for purposes of Section 136 determinations of eligibility—

Incorporated means the state of legal recognition as an artificial person that may be afforded to a business entity pursuant to the laws of any United States jurisdiction or component thereof.

Legally organized means the state of legal recognition that may be afforded to a business entity that is other than a corporation pursuant to the laws of any United States jurisdiction or component thereof. This is the least form of legal recognition that will qualify an offeror for this preference. Only those prospective offerors that have legal status, including the right to bring suit, to sign contracts, and to hold property under the law of the jurisdiction under which they are doing business will qualify as legally organized. A natural person who is a United States citizen acting in her or her entrepreneurial capacity will be deemed to be a ''person legally organized'' within the scope of this definition, provided that the prospective offeror holds all required licenses to do business in the jurisdiction he or she is located.

United States means any jurisdiction that is one of the fifty States, the District of

Columbia, a United States territory, a United States possession, or the Commonwealth of Puerto Rico and the Northern Mariana Islands.

Question 1. The organization seeking eligibility under Section 136 is □ incorporated or is □ legally organized under the laws of what jurisdiction?

_____

2. *Section 136(d)(1):* ''The term 'United States person' means a person that—(B) has its principal place of business in the United States.''

Definitions for purposes of Section 136 determinations of eligibility—

''Principal place of business'' means the geographic location of the main office or seat of management of the prospective offeror. For purposes of this Statement, a prospective offeror shall identify only one principal place of business, and such location shall include at least the offices of the chief operating officer and headquarters staff. The named location must be a United States jurisdiction in which the prospective offeror may bring suit and be sued and in which service of process shall be accepted.

Question 2(a). The organization seeking eligibility has its principal office in what city and state?

_____

Question 2(b). What kind of tax return was or will be filed, and in what jurisdiction, during the current calendar year? The jurisdiction identified herein need not be the same jurisdiction identified in Question 2(a).

(i) Jurisdiction: _____

(ii) Type of return (*e.g.*, income tax, franchise tax, etc.). Include all that apply:

_____

_____

3. *Section 136(d)(1):* ''The term 'United States person' means a person which—(C) has been incorporated or legally organized in the United States—(i) for more than 2 (two) years before the issuance date of the invitation for bids or request for proposals with respect to the contract under subsection (c) of this section.''

Definitions for purposes of Section 136 determinations of eligibility—

Has been incorporated or legally organized means that the organization can show continuity as an ongoing business. Organizations that have changed only their names meet the continuity requirement of this subsection. Organizations that have been bought, sold, merged, or otherwise substantially altered or enlarged their principal business activities will have the burden of proving that there have been ongoing operations by the same business entity for the required period of time. If the successor entity has acquired all of the assets and liabilities of the predecessor entity and the predecessor entity has no further existence, the successor may claim the incorporation or legal organization date of the predecessor. In any other circumstance, the prospective offeror must show that the law of the jurisdiction in which it operates regards the prospective offeror as the complete successor in interest of the predecessor entity for the purpose of contractual obligations.

Issuance date means the date in Block 5 of the Standard Form 33 accompanying this solicitation.

Years means calendar years measured from day of the month to day of the month. For example, January 1, 2002 through December 31, 2002 is one calendar year, as is July 1, 2002 through July 1, 2003.

Question 3:

(i) On what date was the organization seeking eligibility incorporated or legally organized? _____

(ii) If this date is less than two years before the issuance date, on the basis of what documentation does the organization seeking eligibility claim that it has been in business for the requisite period of time? _____ (Identify, and forward copies as an Attachment to this Statement).

4. *Section 136(d)(1):* ''The term 'United States person' means a person which—(D) has performed within the United States or overseas security services similar in complexity to the contract being bid.''

Definitions for purposes of Section 136 determination of eligibility—

Complexity means the physical size or extent of the effort, as described in Section B and Exhibit A of this solicitation; combined with the required quality of the effort as described in Sections C and H of this solicitation.

Overseas means within any jurisdiction that is not a part of the United States as defined below.

Performed means contracts that have been fully completed by the prospective offeror and accepted by the other party to the transaction. Contracts still in progress have been performed for purposes of this definition if performance in complexity to the contract being bid has been ongoing for at least one year. Contracts need not have been with the U.S. Government.

Security services means work of a kind as to fall within or compare closely with those described in the Statement of Work in Section C of this solicitation. An entity whose only security services experience was performed by its legally distinct parent or subsidiary organization will not be considered to have security services experience.

Within the United States means within the legal geographic boundaries of a United States jurisdiction that is the place where the subject matter (*e.g.*, services) of the contract or other arrangement was in fact completed. The place where the contract or other arrangement was negotiated or signed is not relevant to this definition.

Question 4: Describe in an Attachment to this Statement (*see* L.1.3.5), the qualifying similar contracts or other arrangements performed by the prospective offeror. Provide required information on a sufficient number of arrangements to show that similar services have been performed overseas or in the United States. The description must consist of the following information on each arrangement, which shall be submitted as an Attachment to this Statement:

Location: (city and state or country)

Type of service: (for example, stationary guards, roving patrol, quick-reaction force, *etc.*)

Complexity: (type of facilities guarded, and number or extent of facilities, number of guards, *etc.*)

5. *Section 136(d)(1):* ''The term 'United States person' means a person which—(E) with respect to the contract under subsection (c) of this section, has achieved a total business volume equal to or greater than the value of the project being bid in 3 years of the 5-year period before the date specified in subparagraph (C).''

Definitions of purposes of Section 136 determination of eligibility—

3 years of the 5-year period before the date specified in subparagraph (C) means the three to five calendar year period immediately preceding the issuance date of this solicitation.

Total business volume means the U.S. dollar value of the gross income or receipts reported by the prospective offeror on its annual federal income tax returns.

Years means calendar years.

Question 5: Describe in an Attachment to this Statement (*see* L.1.3.5), for at least three of the five twelve-month income tax periods (fiscal years) defined below, the gross receipts of the organization seeking eligibility.

(i) The fiscal year ending during the calendar year that includes the date of this solicitation.

(ii) The fiscal year ending in the calendar year immediately prior to the calendar year that includes the date of this solicitation.

(iii) The fiscal year ending in the calendar year two years before the calendar year that includes the date of this solicitation.

(iv) The fiscal year ending in the calendar year three years before the calendar year that includes the date of this solicitation.

(v) The fiscal year ending in the calendar year four years before the calendar year that includes the date of this solicitation.

An entity will be deemed to have met this requirement if the total cumulative business volume for the three years presented exceeds the contract price at time of award under this solicitation for the full term for which prices are solicited, including any option periods.

6. *Section 136(d)(1):* ''The term 'United States person' means a person which—(F)(i) employs United States citizens in at least 80 percent of its principal management positions in the United States; and (F)(ii) employs United States citizens in more than half of its permanent full-time positions in the United States.''

Definitions for purposes of Section 136 determinations of eligibility—

Full-time (positions) means those personnel positions in which the occupants are expected to and ordinarily work for 40 or more hours per week.

In the United States refers to those personnel positions that are encumbered as of the date of this solicitation and that the prospective offeror maintains in geographic locations within the jurisdictions defined above as constituting the United States.

Permanent (positions) means personnel positions that are intended to be indefinite as to length of employment, as opposed to limited, seasonal, or project-length personnel appointments.

Permanent, full-time positions means that portion of the prospective offeror's workforce

that continues to be employed without regard to the ordinary fluctuations of production or projects.

Principal management positions means those personnel positions including at least the chief executive officer (if any) and the chief operating officer (whether by title or by function) of the organization seeking eligibility, together with all those management officials who constitute the highest levels of management authority within the organization. In the case of a partnership, all general partners are deemed to hold principal management positions. In the case of a corporation, those officers of the corporation who are principally responsible for the day-to-day operation of the corporation. Members of corporation boards of directors do not occupy ''principal management positions'' simply by virtue of their service on the board. In all cases, the term ''principal management positions'' also includes the position or positions held by the individual or individuals in the United States who will have primary corporate management oversight responsibility for this contract if the prospective contractor is awarded the contract.

United States citizen means natural persons with United States citizenship by virtue either of birth or of naturalization.

Question 6(a): The organization seeking eligibility shall list all of its principal management positions and identify the current occupant of each listed position by name and citizenship. Provide the information as an Attachment to this Statement in the following format:

(i) Principal management positions in the United States

Chief Executive Officer (if any):

_____

(name)

_____

(citizenship)

Chief Operating Officer:

_____

(name)

_____

(citizenship)

(ii) For each additional corporate officer having principal responsibility for the day-to-day operations of the corporation, list position, name, and citizenship.

Position	Name	Citizenship

(iii) Individual(s) in the United States expected to have primary management oversight responsibility for contract if it is awarded:

_____

(name)

_____

(citizenship)

Question 6(b): Number of permanent, full-time, currently encumbered personnel positions that are located in the United States (good faith estimates acceptable):

_____

Question 6(c): Number of United States citizens currently employed in permanent, full-time positions that are located in the United States (good faith estimates acceptable): _____

7. *Section 136(d)(1):* ''The term 'United States person' means a person which—(G) has the existing technical and financial resources in the United States to perform the contract.''

Definitions for purposes of Section 136 determinations of eligibility—

Existing technical and financial resources means technical and financial capability within the United States to mobilize adequate staffing, equipment and organizational arrangements to perform the contract. Adequate technical resources may be demonstrated by presenting an organization chart, and resumes of current officers and employees in the United States who possess skills and expertise necessary to provide management and oversight of the work. Other indicia will be considered if offered to demonstrate that the prospective offeror has available resources in the United States adequate to provide home office management and oversight of the work. Adequate financial resources may be demonstrated by proof of possession of a combination of net worth, bank lines of credit, or bank guarantees. If lines of credit or bank guarantees are used to demonstrate adequate financial resources, they must be from entities within the United States.

Question 7: Submit, as an Attachment to this Statement, materials demonstrating existing technical and financial resources in the United States (see L.1.3.5).

8. *Section 136(d)(2):* ''The term 'qualified 'United States joint venture person' means a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture.''

Definitions for purposes of Section 136 determinations of eligibility—

Assets means tangible and intangible things of value conveyed or made available to the joint venture by the co-venturers. To be qualified for U.S. preference, 51 percent of the assets of the joint venture must be owned by the U.S. person co-venturer(s).

Joint venture means a formal or de facto association of two or more persons or entities to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skills, and knowledge. To be acceptable, all members of a joint venture must be jointly and severally liable for full performance and resolution of matters arising out of the contract.

Question 8(a): The prospective offeror □ is □ is not a joint venture.

Question 8(b): If the prospective offeror is a joint venture, the U.S. person participant is:

(name) _____

(address) _____

Question 8(c): If the prospective offeror is a joint venture, the names and countries of citizenship for all co-venturers are as follows:

(name) _____
(citizenship) _____
(name) _____
(citizenship) _____
(name) _____
(citizenship) _____

Question 8(d): If the prospective offeror is a joint venture, the U.S. person will own at least 51 percent of the assets of the joint venture.

I so certify: (name) _____
(position) _____
(title) _____

(e) *Signature:* By signing this document, the offeror indicates that to the best of his or her knowledge, all of the representations and certifications provided in response to the questions contained in this Statement of Qualifications are accurate, current, and complete and that the offeror is aware of the penalty prescribed in 18 U.S.C. 1001 for making false statements.

(End of provision)

90. Section 652.242–70 is amended by removing ''642.271'' and inserting ''642.272(a)'' in its place in the clause prescription.

91. Section 652.242–73 is amended by removing ''642.271(b)'' and inserting ''642.272(b)'' in its place in the clause prescription and in Alternate 1.

PART 653—FORMS

92. Section 653.101–70 is amended by adding a sentence at the end reading as follows: ''The State Department forms are available through the Department's intranet Web site at *http://arpsdir.a.state.gov/eforms.html.*''

93. Section 653.219–71 is added to read as follows:

653.219–71 DOS form DS–4053, Department of State Mentor-Protégé Program Application.

As prescribed in 619.102–70(i), DS–4053 is prescribed for use in applying for an agreement under the Department of State Mentor-Protege Program.

94. Subpart 653.3, consisting of sections 653.300 and 653.303, is removed.

Dated: October 17, 2003.

Corey M. Rindner,

Procurement Executive, Department of State.

[FR Doc. 03–27971 Filed 11–12–03; 8:45 am]

BILLING CODE 4710–05–P

Notices

Federal Register
Vol. 68, No. 219
Thursday, November 13, 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

Methow Transmission Project, Okanogan and Wenatchee National Forests, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA Forest Service and the Okanogan Public Utility District No. 1 (PUD) will jointly prepare an Environmental Impact Statement (EIS) that will evaluate alternatives to provide reliable electric power to the Methow Valley and improve electric distribution to customers in the lower Methow Valley. The project is located in Okanogan County, Washington. Although the proposed action does not involve Federal lands, two of the preliminary alternatives identified for this project involve a ''hot'' rebuild of the existing Loup-Loup electric transmission line. A ''hot'' rebuild would involve replacing the existing high-voltage transmission line and its poles while maintaining power in the existing lines. Approximately 4.5 miles of the 27 mile Loup-Loup transmission line is located on the Okanogan National Forest, approximately 12 miles west of the town of Okanogan. The proposed ''hot'' rebuild alternatives would require additional clearing of vegetation in the existing right-of-way (ROW) on National Forest System (NFS) lands. The proposed project will comply with direction in the 1989 Okanogan National Forest Land and Resource Management Plan (Forest Plan), as amended. The Forest Plan provides the overall guidance for management of NFS lands included in this proposal. In addition, the Loup-Loup line also traverses approximately one mile of Bureau of Land Management lands. The agencies invite written comments on the scope of this project. In addition, the agencies give notice of this analysis so that interested and affected individuals are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by December 15, 2003. A public information and scoping meeting is proposed to be held in November to provide information about the project to the public and to allow people to comment on the project.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Keith Rowland, Project Coordinator, Okanogan Valley Office, 1240 Second Avenue South, Okanogan, Washington 98840 [Phone: (509) 826–3067; E-mail: *krowland@fs.fed.us*].

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Keith Rowland, Project Coordinator, Okanogan Valley Office, 1240 Second Avenue South, Okanogan, Washington 98840 [Phone: (509) 826–3067; E-mail: *krowland@fs.fed.us*].

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The Okanogan Public Utility District (PUD) is a non-profit local government entity whose mission is to provide reliable electrical service to those within its defined boundaries, and to plan for the future electrical service needs of its constituency (Title 54 RCW). The PUD is responsible for providing electrical service to the communities of Pateros, Twisp, and the unincorporated area of the lower Methow Valley in Okanogan County, among other communities in its service area. The Okanogan National Forest Land and Resource Management Plan permits and gives priority to special uses that provide public service. Pateros, Twisp, and the unincorporated lower Methow Valley area are currently served by a single transmission route constructed in 1948 that crosses Loup Loup Pass from Okanogan to Twisp. Distribution of that electrical service throughout the lower Methow Valley depends on a system that is approaching capacity now under average winter conditions and will not meet severe winter demand. The PUD has proposed the construction of a new transmission line, a new substation, and improvements to the distribution system in order to meet its obligations under the law to provide reliable electricity at reasonable rates to its ratepayers.

The PUD is also a party to a general transfer agreement (GTA) with the Bonneville Power Administration (BPA) for providing transmission service to the Okanogan County Electric Cooperative (Co-op). The Co-op provides service to the upper Methow Valley including the towns of Winthrop and Mazama. BPA has notified the PUD that the reliability of the existing transmission system is below standard.

Proposed Action: The proposed action, the project proposed by the PUD, involves construction of approximately 26.5 miles of 115 KV electric transmission line and associated access roads between Twisp and Pateros in Okanogan County, Washington. The first 5.5 miles of transmission line (from the existing Twisp substation) would overbuild existing distribution along highways 20 and 1523. Existing poles would be replaced as part of this overbuild. The remainder of the proposed transmission line would be constructed along the benches and foothills to the east of Highway 153. The final 1.7 miles of the proposed transmission line (south to the existing Pateros substation) would parallel Watson Draw Road. The proposed project would also include construction of a new substation located along Highway 153 between Carlton and Methow in the Gold Creek area, as well as improvements to the existing distribution system. Construction of the proposed project would occur in 2006. Under NEPA, the ''proposed action'' may be, but is not necessarily, the agency's ''preferred alternative.'' The proposed action identified above represents the PUD's initial proposal that has not yet undergone analysis in the EIS process. The EIS process will involve evaluation of the proposed action described above, as well as other reasonable alternatives to the proposed action.

Alternatives: For the purposes of this analysis, the PUD and Forest Service have identified preliminary action alternatives for consideration in the scoping process. The preliminary action alternatives all include construction of new electric transmission capacity and improvement of the existing distribution capacity. Four of the preliminary action alternatives also include construction of a new substation in the Gold Creek area

near Washington State Route 153. Two of the preliminary alternatives involve a ''hot'' rebuild of the existing Loup-Loup electric transmission line. Approximately 4.5 miles of the 27 mile Loup-Loup transmission line is located on the Okanogan National forest, approximately 12 miles west of the town of Okanogan and approximately one mile is located on Bureau of Land Management Land, two miles southwest of Okanogan. The proposed ''hot'' rebuild alternatives would require additional clearing of vegetation in the existing ROW on National Forest Service (NFS) lands.

The alternatives currently under consideration are:

- The No-action alternative under which there would be no new powerline built and non ''hot'' rebuild of the existing Loup Loup line.
- The proposed Twisp/Pateros transmission line that would connect existing substations in Twisp and Pateros and involve construction of a new substation located along Highway 153 between Carlton and Methow in the Gold Creek area, as well as distribution improvements.
- A ''hot'' rebuild of the existing Loup-Loup transmission line that would include approximately 15 miles of new transmission line from Pateros to Gold Creek, as well as a new substation in the Gold Creek area. This new transmission line and substation are assumed to involve the same alignment and substation proposed for the Twisp/Pateros transmission line and substation.
- A ''hot'' rebuild of the existing Loup-Loup transmission line that would include an upgrade of distribution between Twisp and Pateros, but not a substation or the 15 miles of new line to Gold Creek.
- A new transmission line that would overbuild or follow the existing distribution line near the Methow River along the valley floor, including a new substation.
- A new transmission line along the valley floor that would be aligned to reduce the number of Methow River crossings associated with a route that overbuilds or follows the existing distribution line. This alternative would also include construction of a new substation.

The final alternatives analyzed in detail will depend on issues raised during public scoping.

Lead and Cooperating Agencies: The Forest Service and the PUD will be joint lead agencies in accordance with 40 CFR 1501.5(b), and are responsible for preparation of the EIS. The Forest Service will serve as the lead NEPA agency. The PUD will serve as the lead Washington SEPA agency. The Washington State Department of Natural Resources (DNR), the U.S. Department of the Interior, Bureau of Land Management (BLM), and the Bonneville Power Administration (BPA) will be cooperating agencies are needed.

Nature of Decision To Be Made: The Forest Supervisor for the Okanogan and Wenatchee National Forests will decide whether to permit a ''hot'' rebuild of the existing Loup-Loup electric transmission line across NFS lands if this is the preferred alternative identified by the agencies. If this alternative is permitted, the Forest Supervisor will also decide what mitigation measures and monitoring will be required. The Forest Supervisor will only be making a decision regarding operations on NFS lands. The Forest Supervisor will not have a decision to make if the PUD selects an alternative for the Methow Transmission Project that does not involve NFS lands.

Scoping Process: Public participation will be especially important at several points during the analysis. The participating agencies will be seeking information, comments, and assistance from Federal, State, local agencies, Native American Tribes and other individuals and organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. The scoping process includes:

- Identifying major issues to be analyzed in depth.
- Identifying issues that have been addressed by a relevant previous environmental analysis including the *SEPA Checklist and Determination of Nonsignificance and Response to Comments and Additional Information on the SEPA Checklist and DNS* documents prepared by the PUD.
- Identifying potential environmental effects of the alternatives identified to date.
- Identifying potential alternatives that meet the Purpose and Need of the project.
- Notifying interested members of the public of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (*e.g.,* newsletters, correspondence, *etc.*)

Preliminary Issues

A number of issues were identified in the public comment received on the *SEPA Checklist and Determination of Nonsignificance* issued by the PUD in August 1998. Major issues identified included potential effects to eagles and sharp-tailed grouse, critical deer habitat, noxious weeds, aesthetic concerns, and cumulative effects. These issues were identified specifically with regards to the proposed Twisp/Pateros transmission line route. The Forest Service has identified the following preliminary issues should a ''hot'' rebuild of the existing Loup-Loup transmission line be identified by the agencies as the preferred alternative: impacts on visual quality, potential for spread of noxious weeds, potential for sedimentation, and safety during construction.

Comment Requested

This notice of intent initiates the scoping process, which guides development of the EIS. The Forest Service is seeking public and agency comment on the proposed action to identify major issues to be analyzed in depth and assistance in identifying potential alternatives to be evaluated. Comments received to this notice, including the names and addresses of those who comment, will be considered part of the public record on this proposed action, and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality. Where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted, without name and address, within a specified number of days.

A draft EIS will be prepared for comment. Copies will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The draft EIS is

expected to be filed in September 2004. The final EIS is expected to be filed in May 2005.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS state but that are not raised until after the completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 409 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the participating agencies at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the participating agencies in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the participating agencies are required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Forest Supervisor for the Okanogan and Wenatchee National Forest will be the Federal responsible official for this EIS and its Record of Decision. Should the selected alternative involve National Forest System lands, the Federal responsible official will document the decision and reasons for the decision in the Record Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: November 3, 2003.

James L. Boynton,

Forest Supervisor.

[FR Doc. 03–28397 Filed 11–12–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 110503B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Permit Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648-0205.

Type of Request: Regular submission.

Burden Hours: 9,862.

Number of Respondents: 10,592.

Average Hours Per Response: 5 minutes for a dealer permit application; 20 minutes for a vessel permit application; 4 hours to install a vessel monitoring system in the rock shrimp fishery; 2 hours to annually maintain a vessel monitoring system; .23 hours for a position report; 1 hour for an operator permit application; 2 hours for a rock shrimp vessel non-renewed endorsement request; 20 minutes for an aquacultured live rock site permit application; 45 minutes for an aquacultured live rock site evaluation report; 5 minutes for notification of the permit purchase price for a permit transfer; 20 minutes for an endorsement transfer in the Gulf red snapper fishery; 5 minutes for an endorsement (placement) in the Gulf red snapper fishery; 20 minutes for other endorsements; 5 minutes for notification of lost or stolen traps in the golden crab or Caribbean spiny lobster fishery; 5 minutes for an observer or vessel transit notification in the golden crab fishery; 15 minutes for a notification of authorization for trap removal; 5 minutes for notification of harvest activity for aquacultured live rock; and 5 minutes for a permit application for octocoral or allowable chemical vessel permit.

Needs and Uses: Participants in the Federally-regulated fishery in the Exclusive Economic Zone of the South Atlantic, Gulf of Mexico, and Caribbean are required to obtain Federal permits under the existing permit program. NOAA needs information from the applications and associated data collections to identify fishing vessels/dealers/participants, properly manage the fisheries, and generate fishery-specific data.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Biennially, triennially, and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202-395-7285, or *David__Rostker@omb.eop.gov*.

Dated: November 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–28379 Filed 11–12–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 110503D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Economic Surveys for U.S. Commercial Fisheries.

Form Number(s): None.

OMB Approval Number: 0648-0369.

Type of Request: Regular submission.

Burden Hours: 12,299.

Number of Respondents: 9,678.

Average Hours Per Response: The response times for individual surveys will vary from a 10-minute survey added to existing logbooks to 2 hours for full surveys.

Needs and Uses: NOAA is proposing to expand its current clearance for

economic data from West Coast commercial fisheries to all U.S. regions. This is a generic approval request. The economic data collected would be used to address statutory and regulatory mandates to determine the quantity and distribution of net benefits derived from living marine resources, as well as to predict the economic impacts from proposed management options on commercial harvesters, shoreside industries, and fishing communities. In particular, the data will be used to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, the National Environmental Policy Act, the Regulatory Flexibility Act, Executive Order 12866, and a variety of state statutes.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion, annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202-395-7285, or *David__Rostker@omb.eop.gov*.

Dated: November 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–28381 Filed 11–12–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 110503F]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Scale and Catch Weighing Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0330.

Type of Request: Regular submission.

Burden Hours: 8,058.

Number of Respondents: 39.

Average Hours Per Response: 45 minutes for a record of daily scale test; 45 minutes per day for printing a record of the weight of each delivery; 20-190 hours for documents for requesting a scale type evaluation; 6 minutes for an inspection request for at-sea scales; 6 minutes for an at-sea scale approval report/sticker; 6 minutes for a request to inspect scales on behalf of NOAA; 2 hours for a request for an observer station inspection; 5 minutes for an inspection request by an inshore processor; 40 hours for a catch monitoring and control plan; 8 hours for an addendum to a catch monitoring and control plan; and 5 minutes for a notification of an observer of the offloading schedule to delivery.

Needs and Uses: The procedures in question are designed for Western Alaska Community Development Quota (CDQ) catcher/processors, American Fisheries Act (AFA) catcher/processors, and AFA motherships. This existing information collection would be revised to incorporate catch-weighing requirements for AFA inshore processors (shoreside processors and stationary floating processors).

The National Marine Fisheries Service (NMFS) must be able to ensure that the total weight, species composition, and catch location for each delivery are reported accurately. This is accomplished through a catch-monitoring system that: allows for independent verification of catch weight, species composition and haul location data; ensures that all catch is weighed accurately; and provides a record of the weight of each delivery that may be audited by NMFS. Requirements include approval of scale types for use, inspection requests, scale tests, an inshore processor catch monitoring and control plan, and printed output from scales.

Affected Public: Business and other for-profit organizations, individuals or households.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202-395-7285, or *David__Rostker@omb.eop.gov*.

Dated: November 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–28383 Filed 11–12–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Open Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on December 4, 2003 at 9 a.m. in Room 6087B of the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda:

1. Opening remarks and introductions.
2. Approval of minutes from previous meeting.
3. Presentation of papers and comments by the public.
4. Status on List Review.
5. Comments on machine tool license.
6. Review of MPETAC proposal on 5-axis large machine tools.
7. Review of MPETAC proposal on jig grinder machine tools.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, Advisory Committees MS: 1099D, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230.

For more information contact Lee Ann Carpenter at (202) 482–2583.

Dated: November 6, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–28396 Filed 11–12–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-412–803]

Industrial Nitrocellulose from the United Kingdom: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: November 13, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Mire or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4711 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2003, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom covering the period July 1, 2002 through June 30, 2003 (68 FR 39511, 39512).

On August 19, 2003, pursuant to a request by the petitioner, Green Tree Chemical Technologies, Inc. (Green Tree), the Department initiated an administrative review of Imperial Chemical Industries PLC (ICI) and Troon Investments Limited (TIL), which are subject to the antidumping duty order on industrial nitrocellulose from the United Kingdom, for the period July 1, 2002 through June 30, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 50750, 50752 (August 22, 2003). On October 31, 2003, Green Tree withdrew its request for an administrative review of ICI and TIL.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. Since the notice of initiation of this administrative review was published on August 22, 2003, and Green Tree, the party requesting this administrative review, withdrew its request for review within 90 days after the date of publication of the notice of initiation, the Department is rescinding the administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom for the period July 1, 2002 through June 30, 2003, in accordance with section 351.213(d)(1) of the Department's regulations.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and section 351.213(d)(4) of the Department's regulations.

Dated: November 5, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–28446 Filed 11–12–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110503C]

Proposed Information Collection; Comment Request; Interim Capital Construction Fund Agreement and Certificate Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before January 12, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Charles L. Cooper, Financial Services Division, Office of Constituency Services, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910 at 301-713-2396, ext. 213, or at *Charles.Cooper@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The respondents will be commercial fishing industry individuals, partnerships, and corporations that want to enter into Capital Construction Fund agreements with the Secretary of Commerce. Such agreements allow deferral of Federal taxation on fishing vessel income deposited into a fund for the respondent for use in the acquisition, construction, or reconstruction of a fishing vessel. Deferred taxes are recaptured by reducing an agreement vessel's basis for depreciation by the amount withdrawn from the fund for its acquisition, construction, or reconstruction. The information collected from agreement holders is used to determine their eligibility to participate in the Capital Construction Fund Program pursuant to 50 CFR part 259.

At the completion of the construction/reconstruction, a certificate to that effect must be submitted.

II. Method of Collection

The information will be collected on forms: the Fishing Vessel Capital Construction Fund Application, the Interim Capital Construction Fund Agreement, and the Certificate of Construction/Reconstruction.

III. Data

OMB Number: 0648–0090.

Form Number: NOAA Form 88–14.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Response: 3.5 hours for agreement; and 1 hour for a certificate.

Estimated Total Annual Burden Hours: 2,250.

Estimated Total Annual Cost to Public: $3,145.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–28380 Filed 11–12–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110503E]

Proposed Information Collection; Comment Request; Eastern Pacific Tuna Vessel Register Information

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before January 12, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Trisha Culver at 562-980-4239 or at *Trisha.Culver@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Owners of vessels that fish for tuna in the eastern Pacific Ocean (bounded by the coast of the Americas, 40° N. lat., 40° S. lat., and 150° W. long.) were required to submit information about their fishing vessels in 2000 so that the United States could provide information for a vessel register being compiled under the terms of an Inter-American Tropical Tuna Commission (IATTC) recommendation approved by the Department of State under the Tuna Conventions Act. The National Marine Fisheries Service used existing sources of information to obtain most of the information needed, but vessel owners were required to provide some information as well as a picture of the vessel with its registration number showing. The vessel register is needed to support uniform monitoring of compliance with IATTC conservation and management recommendations that are implemented by member governments, including the United States. Once the initial information was provided, the only reporting requirement was to report changes in vessel characteristics, ownership or other information on the form. It is estimated that no more than 30 vessel owners would be subject to this requirement in any year. In addition, it is estimated that 20 reports will be needed annually for new vessels to be placed on the register.

II. Method of Collection

Paper forms and pictures are submitted.

III. Data

OMB Number: 0648–0431.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 1 hour for taking, developing, and mailing vessel picture. Other burden varies from 5-20 minutes depending on the existing data sets available from other sources for different fleets or fleet segments. The estimated average burden for reporting information changes or for reports for new vessels is 20 minutes.

Estimated Total Annual Burden Hours: 47.

Estimated Total Annual Cost to Public: $350.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–28382 Filed 11–12–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102903D]

Endangered Species; File No. 1245

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

ACTION: Receipt of application for modification

SUMMARY: Notice is hereby given that J. David Whitaker, South Carolina Department of Natural Resources, P.O. Box 12559, Charleston, South Carolina 29422–2559, has requested a modification to scientific research Permit No. 1245.

DATES: Written or telefaxed comments must be received on or before December 15, 2003.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727) 570–5301; fax (727) 570–5320.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits,

Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Carrie Hubard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1245, issued on May 19, 2000 (65 FR 36666) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1245 authorizes the permit holder to capture, handle, flipper and PIT tag, blood and tissue sample, perform ultrasound and release 350 loggerhead (*Caretta caretta*), 50 Kemp's ridley (*Lepidochelys kempii*), 10 green (*Chelonia mydas*), 5 hawksbill (*Eretmochelys imbricata*) and 3 leatherback (*Dermochelys coriacea*) turtles along the South Carolina coastline. The permit holder is requesting authorization to satellite tag 9 loggerhead turtles and acoustic tag 24 loggerhead turtles. No more than 6 individuals will receive both tags. The purpose of the tags is to begin to determine feeding site fidelity and migratory patterns of juvenile loggerhead sea turtles along the South Carolina coastline. The permit holder is also requesting a one year extension of the permit, which would mean Permit No. 1245 would expire on October 31, 2005.

Dated: November 6, 2003.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–28384 Filed 11–12–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Group Application Under Pub. L. 95–202 and Department of Defense Directive (Dodd) 1000.20

Under the provisions of Section 401, Pub. L. 95–202 and DoD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of a group known as: ''The U.S. Civilian Employees of CAT, Inc., Who Were Flight Crew Personnel (U.S. Pilots, Co-Pilots, Navigators, Flight Mechanics, and Air Freight Specialists) and Aviation Ground Support Personnel (U.S. Maintenance Supervisors, Operations Managers, and Flight Information Center Personnel) and Conducted Paramilitary Operations in Korea, French Indochina, Tibet and Indonesia From 1950 Through 1959; and U.S. Civilian Employees of Air America Who Were Flight Crew Personnel and Ground Support Personnel, as Described, and Conducted Paramilitary Operations in Laos from 1961 Through 1974, When the War in Laos Ended; and U.S. Civilian Employees of Air America Who Were Flight Crew Personnel and Ground Support Personnel, as Described, and Conducted Paramilitary Operations in Vietnam From 1964 Through 1975, When Saigon Was Evacuated and Air America Flight Operations Ceased.''

Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DoD Civilian/Military Service Review Board, 1535 Command Drive, EE-Wing, 3rd Floor, Andrews AFB, MD 20762–7002. Copies of documents or other materials submitted cannot be returned.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–28331 Filed 11–12–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

The Release of the Draft Environmental Impact Statement and the Announcement of a Public Hearing for the Relocation of Bogue Inlet Channel Between Emerald Isle and Hammocks Beach State Park, and the Placement of the Dredged Material onto Emerald Isle Beach, in Carteret County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice

SUMMARY: The U.S. Corps of Engineers (COE), Wilmington District, Wilmington Regulatory Field Office has received a request for Department of the Army authorization, pursuant to section 404 of the Clean Water Act and section 10 of the Rivers and Harbor Act, from the Town of Emerald Isle for the relocation of Bogue Inlet Channel to protect residential homes and town infrastructures, and to place the dredged material on approximately 5.0 miles of beach for nourishment. The project is being proposed to move the main ebb channel in Bogue Inlet to a more central location between the west end of Bogue Banks and the east end of Bear Island (Hammocks Beach State Park). The main ebb channel through Bogue Inlet presently occupies a position juxtaposed to the west end of the Town of Emerald Isle and is causing severe erosion that threatens development in the subdivision known as The Pointe.

The relocation of the main ebb channel to a central location would restore the channel to a position it occupied in the late 1970s and eliminate the erosive impact of tidal currents on the east shoulder of the inlet. A portion of the material removed to relocate the main ebb channel would be used to close the existing channel with the balance of the material used to nourish the shoreline on the west end of the Town of Emerald Isle.

The channel through Bogue Inlet has been maintained by the COE for commercial and recreational boating interest since 1981. The COE is authorized to maintain the channel to a depth of 8 feet mean low water (mlw) over a width of 150 feet. Any changes in the location of the ebb tide delta channel would be consistent with this maintenance criteria.

DATES: The public hearing will be held at the Emerald Isle Parks and Recreation Community Center, at 7500 Emerald Isle Drive, in Emerald Isle, on December 8, 2003 at 6:30 p.m. Written comments on

the Draft Environmental Impact Statement (EIS) will be received until December 26, 2003.

ADDRESSES: Copies of comments and questions regarding the Draft EIS may be addressed to: U.S. Corps of Engineers, Wilmington District, Regulatory Division. ATTN: File Number 2001–00632, Post Office Box 1890, Wilmington, NC 28402–1890.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. Mickey Sugg, Wilmington Regulatory Field Office, telephone: (910) 251–4811.

SUPPLEMENTARY INFORMATION: 1. *Project Description.* The Town of Emerald Isle, located along the western 11.2 miles of Bogue Banks, North Carolina, is proposing to reposition the main ebb tide channel (or bar channel) through Bogue Inlet as a means to address a severe erosion problem that is threatening development and town infrastructure located on the west end of the town in an area known as The Pointe. The severe erosion at the Pointe is occurring as a result of the eastward migration of the main ebb channel of Bogue Inlet. An analysis of historic photographs of the inlet indicates that the midpoint of the channel has experienced movements to both the west and east with the latest trend being toward the east. Since September 1981, the channel midpoint migrated a total of over 3,900 feet to the east, however, a majority of this movement occurred between September 1981 and February 1984. From February 1984 to September 2001, the channel moved slightly more than 1,500 feet to the east, which represents an annual rate of 104 feet/year. The eastward movement of the channel has been accompanied by erosion of the Bogue Banks shoulder of the inlet (the Pointe shoreline) with the rate of erosion of the shoreline averaging 56 feet/year between February 1984 and September 2001. If this rate of erosion of the Pointe shoreline continues unabated, it is estimated that 30 to 50 structures could be lost or severely damaged during the next 5 to 10 years. In addition, 300 to 600 feet of Inlet Drive could be lost along with side streets and utilities serving the Pointe subdivision.

Secondary features of the proposed project includes using a portion of the dredged material to close the existing ebb channel with the balance of the material used to nourish approximately 24,000 linear feet (5.0 miles) of beach along the west end of the Town of Emerald Isle. In this regard, the Town of Emerald Isle presently has permits to nourish 51,100 (9.68 miles) of ocean shoreline using offshore borrow areas. Approximately 5.8 miles of this shoreline was nourished between January and March 2003. The Emerald Isle beach nourishment project is part of an island-wide project sponsored by Carteret County. The County project covers approximately 16.8 miles of ocean shoreline and begins at the east town limits of the Town of Pine Knoll Shores and ends at a point 8,000 feet (1.5 miles) east of Bogue Inlet.

2. *Proposed Action.* The primary purpose of the channel relocation project is to create a stable channel that will divert tidal flow away from the Pointe area of Emerald Isle. Therefore, the design focus is on developing channel dimensions that will capture the majority of the ebb tidal flow through the inlet. An added feature of the overall design would be the closure of the existing channel by using approximately 200,000 cubic yards of material to construct a sand dike across the existing channel in the vicinity of the Pointe. The dimensions of the relocated channel are sized to capture the tidal prism of Bogue inlet and to divert flow away from the Point shoreline. The optimum channel has been determined to have a channel depth of −13.5 feet NGVD and a maximum width of 500 feet. The construction of the new channel would require the removal of approximately 1,009,500 cubic yards of feet.

The material to be removed has a mean diameter of 0.30 mm, compared to 0.22mm native beach material, and contains 1.25% silt and minimal shell content.

Apart from the channel dimensions, the new channel must be position so that it does not cause adverse impacts on the adjacent shorelines or result in unacceptable loss of estuarine habitat. The selection of a channel location was based on detailed geomorphic analysis of the inlet and adjacent shorelines, conducted by Dr. William J. Cleary, University of North Carolina at Wilmington. The geomorphic analysis will utilize an assortment of aerial photographs of the inlet covering the period from 1938 to 2001. However the primary emphasis will be on changes in the inlet and the adjacent shorelines between 1973 and 2001. The geomorphic analysis consists of an evaluation of the following: (a) Location of the channel midpoint relative to the Pointe, (b) the orientation of the inlet's ebb tide delta channel, (c) the configuration of the ebb tide delta *i.e.,* the percent of the ebb tide delta east and west of the main ebb channel, (d) inlet shoulder changes (the Pointe shoreline and the west tip of Bear Island), (e) changes in the ocean shoreline on the west end of Bogue Banks and the east end of Bear Island (Hammocks Beach State Park), and (f) changes in the interior marsh islands (primarily Dudley Island and Island 2). The measured changes the adjacent shorelines, inlet shoulders, and the interior marshes will be related to changes in the physical makeup of the inlet including the position and orientation of the ebb tide delta channel and the configuration of the ebb tide delta.

Geomorphic analysis indicates that the cumulative shoreline changes on each island were averaged over 3,500 feet of shoreline immediately adjacent to the inlet. When the percent of the ebb tide delta on the Bogue Banks side is small, as is was between 1984 and 2001, the bar channel was located close to Bogue Banks and the portion of the delta on the Bogue Banks side was providing some degree of wave sheltering for the west end of the island. This particular ebb tide delta configuration resulted in a considerable amount of accretion along the 3,500-foot shoreline immediately east of the inlet while Bear Island experienced an almost mirror image response on its ocean shoreline, i.e. erosion. Even though the present ebb tide delta configuration is favorable for the extreme west end of Emerald Isle, the eastward migration of the inlet channel that led to the existing inlet configuration also caused the inlet shoreline of Bogue Banks (the Pointe shoreline) to erode. Not only has the Bogue Banks inlet shoreline eroded in response to the eastward movement of the channel, so has the Bear Island ocean and inlet shorelines. Based on these and numerous other comparisons, the preliminary results of the geomorphic analysis indicates that a centrally located channel, approximating the position and orientation of the channel in 1978, may be beneficial to the inlet shoreline on Bogue Banks (the Pointe shoreline) and the east end of Bear Island.

3. *Alternatives.* Several alternatives have been identified and evaluated through the scoping process, and further detailed description of all alternatives is disclosed in Section or Chapter 3 of the Draft EIS.

The applicant's preferred alternative is to relocate the channel to a central location and to utilize the dredged material to nourish approximately 5.0 miles of beach.

4. *Scoping Process.* A public scoping meeting was held on October 29, 2002 and a Project Delivery Team (PDT) was developed to provide input in the preparation of the EIS. The PDT is comprised of local, state, and federal

government officials, local residents, nonprofit organizations, local fisherman, and a university professor.

The COE has initiated consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife Coordination Act, and with the National Marine Fisheries Service under the Magnuson-Stevens Act and Endangered Species Act. Additionally, the EIS has assessed the potential water quality impacts pursuant to Section 401 of the Clean Water Act, and is coordinating with the North Carolina Division of Coastal Management (DCM) to determine the projects consistency with the Coastal Zone Management Act. The COE is coordinating closely with DCM in the development of the EIS to ensure the process complies with State Environmental Policy Act (SEPA) requirements, as well as the NEPA requirements. The Draft EIS has been designed to consolidate both NEPA and SEPA processes to eliminate duplications.

Dated: November 4, 2003.

George T. Burch,

Chief of Staff.

[FR Doc. 03–28322 Filed 11–12–03; 8:45 am]

BILLING CODE 3710–GN–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Feasibility Report/Environmental Impact Statement/Environmental Impact Report for the Grayson and Murderer's Creeks Project, Contra Costa County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the U.S. Army Corps of Engineers (Corps), Sacramento District, is preparing a Draft Feasibility Report/Environmental Impact Statement/Environmental Impact Report (Feasibility Report/EIS/EIR) to evaluate the opportunities to reduce flood damages, restore wetland and riparian habitat, and support recreation adjacent to Grayson and Murderer's Creeks watershed, Contra Costa County, California. A reconnaissance study was funded under the Energy and Water Development Appropriations Bill of 2002. The Corps completed the resulting study in October 2002. The report found a Federal interest in reducing flood damages, restoring the ecosystem, and improving recreational opportunities in Contra Costa County. The basic study authority for the Walnut Creek watershed was provided under a House Resolution adopted on June 19, 1963.

The feasibility study will consist of two phases. Phase I will start with a public workshop designed to solicit input from the public and interested agencies on the nature and extent of issues to be addressed in the Draft Feasibility Report/EIS/EIR. It will conclude with a conference to present and discuss the detailed evaluation of existing and future conditions, including the comprehensive mapping of the flood plains, flood damages, and the identification of problems and opportunities associated with each watershed. Preliminary alternatives will be developed, evaluated, and screened. Important cultural and environmental resources in the study area along with the associated effects and mitigation requirements for each preliminary alternative will be considered during the evaluation. Federal interest in at least one preliminary alternative will be established.

Phase II will consist of further development of the preliminary alternatives including detailed designs, costs, and benefits. The project benefits associated with each final alternative plan will be evaluated. The Draft Feasibility Report/EIS/EIR will be completed in conjunction with additional public meetings. Upon the review and incorporation of the public feedback, the Final Feasibility Report/EIS/EIR will be published. The final report will be forwarded through the Corps' Headquarters to the Assistant Secretary of the Army (Civil Works) for transmission to the Office of Management and Budget.

DATES: A meeting is scheduled for Tuesday, November 18, 2003, at 7 p.m. at the Pleasant Hill Community Center, 320 Civic Drive, Pleasant Hill, California.

Comments: Submit comments regarding the study by January 10, 2004.

ADDRESSES: Send written comments and suggestions concerning this study to Ms. Melisa Helton, U.S. Army Corps of Engineers, Sacramento District, Attn: Planning Division (CESPK–PD–R), 1325 J Street, Sacramento, California 95814. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Ms. Melisa Helton, E-mail at *melisa.n.helton@usace.army.mil,* telephone (916) 557–7948, or fax (916) 557–5138.

SUPPLEMENTAL INFORMATION:

1. *Public Involvement:* The study will be coordinated between Federal, State, and local governments; local stakeholders; special interest groups; and any other interested individuals and organizations. The Corps will hold a public workshop/environmental scoping meeting to discuss the scope of the Draft Feasibility Report/EIS/EIR (*see* **DATES**). The meeting will be advertised in advance in local newspapers, and meeting announcement letters will be sent to interested parties. The purpose of this meeting is to involve local stakeholders and the public early in the study process. The meeting will focus on collecting public input regarding the study scope, historic and current problems, and potential opportunities. All public comments will be documented for future consideration and reference. Written comments regarding the meeting may also be submitted via mail and should be directed to Ms. Melisa Helton at the address listed above. The Corps intends to issue the Draft Feasibility Report/EIS/EIR in the summer of 2006. The Corps will announce availability of the draft document in the **Federal Register** and other media, and will provide the public, organizations, and agencies with an opportunity to submit comments, which will be addressed in the Final Feasibility Report/EIS/EIR.

2. *Project Information:* Grayson and Murderer's Creeks are located 4 miles northwest of Walnut Creek in Pleasant Hill, Contra Costa County. The study area is located 15 miles northeast of Berkeley, 20 miles east of San Francisco. It is located in the upper Walnut Creek Basin and is composed of approximately 180 square miles, including the cities of Walnut Creek, Pleasant Hill, and Concord in Contra Costa County.

Flooding in the 1950's and 1960's spurred Contra Costa County to initiate additional flood control studies with the Corps of Engineers on Grayson and Murderer's Creeks. In both a 1973 and a 1992 Feasibility Report, no Federal interest was found due to insufficient economic benefits. As a result of flooding during the 1990's, local municipalities renewed efforts to resolve these flooding problems. The 1997 flood, an estimated 18-year event, caused damage to about 100 homes in the City of Pleasant Hill. In addition, the Federal Emergency Management Agency (FEMA) is currently revising the floodplain maps to include 700 homes within the 100-year floodplain.

3. *Proposed Action:* The proposed project would reduce flood damages,

restore the ecosystem along the channels, and improve recreational opportunities adjacent to the creeks. Numerous plans have already been studied by Contra Costa County and the City of Pleasant Hill. The primary focus of these studies has been to reduce damages from significant flood events. These reductions would minimize the number of homes required to participate in the Federal Emergency Management Agency (FEMA) Flood Insurance Program.

4. *Alternatives.* Potential alternatives to reduce flood damages include: (1) No action; (2) a single flood detention basin at Grayson branch with inlet and outlet control and no channel improvements; (3) multiple flood detention basins at Grayson and Murderer's branch with inlet and outlet control and no channel improvements; (4) multiple flood detention basins at Grayson branch and Murderer's branch except that the flood detention basin at Grayson branch is in a different location that occupies a larger area and no channel improvements; and (4) a smaller flood detention basin with inlet and outlet control with channel improvements.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–28321 Filed 11–12–03; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–090]

ANR Pipeline Company; Notice of Negotiated Rate Tariff Filing

November 5, 2003.

Take notice that on October 30, 2003, ANR Pipeline Company (ANR), tendered for filing its Negotiated Rate Tariff Filing.

ANR's filing requests that the Commission approve two negotiated rate agreements between ANR and Enbridge Gas Distribution Inc. ANR requests that the Commission grant such approval effective November 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00201 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–41–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

November 5, 2003.

Take notice that on October 31, 2003, Canyon Creek Compression Company (Canyon) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Tenth Revised Sheet No. 6 and First Revised Sheet No. 6A, to be effective December 1, 2003.

Canyon states that the purpose of this filing is to make a periodic adjustment in Canyon's rates under its cost-of-service tracking mechanism. This filing represents the second tracking filing under Section 37 of the General Terms and Conditions of Canyon's Tariff.

Canyon states that copies of the filing are being mailed to its customers and state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00194 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–115]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

November 5, 2003.

Take notice that on October 31, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval negotiated rate agreements between CEGT and Tenaska Gas Storage, LLC, and Dynegy Marketing and Trade. CEGT has entered into agreements to provide park and loan service to both shippers under Rate Schedule PHS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00199 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–116]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

November 5, 2003.

Take notice that on October 31, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective November 1, 2003:

First Revised Sheet No. 855
First Revised Sheet No. 856

CEGT states that the purpose of this filing is to reflect the termination or expiration of certain negotiated rate transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the efiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00200 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–38–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 5, 2003.

Take notice that on October 31, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the following tariff sheets, with a proposed effective date of November 30, 2003:

Third Revised Sheet No. 100
Third Revised Sheet No. 105
Fifth Revised Sheet No. 116
Third Revised Sheet No. 130
Fourth Revised Sheet No. 166

Columbia states it is proposing to add the following sentence: ''Transporter may separate the components of a previously combined Service Agreement under this Section into separate Service Agreements if Transporter determines that separation is necessary to ensure that the rates, terms, and conditions applicable to each component are distinctly maintained.'' This proposed change, along with the tariff changes previously approved by the Commission in Docket No. RP03–579, will enable Columbia to provide shippers a source of flexibility while at the same time ensuring that existing shippers will not be adversely impacted by this change.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00191 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–40–000]

Distrigas of Massachusetts LLC; Notice of Proposed Changes in FERC Gas Tariff

November 5, 2003.

Take notice that on October 31, 2003, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become December 1, 2003:

Sixteenth Revised Sheet No. 94

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's index of customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00193 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–36–000]

Enbridge Pipelines (KPC); Notice of Revenue Refund

November 5, 2003.

Take notice that on October 31, 2003, Enbridge Pipelines (KPC) tendered for filing an Excess Interruptible Revenue Refund Report.

KPC states that the report is made pursuant to section 24.5 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. KPC has requested a waiver of the crediting provisions of section 24.5 in order to credit the amount otherwise refundable against the current balance of receivable from Missouri Gas Energy. In addition, KPC states that its tariff allows KPC to retain twenty percent of Kansas Gas Service's allocable share of any credits resulting from application of section 24.5 of its tariff.

KPC states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: November 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00209 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–47–000]

High Island Offshore System, L.L.C.; Notice of Tariff Filing

November 5, 2003.

Take notice that on November 3, 2003, High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in appendix A to the filing, with an effective date of January 1, 2004.

HIOS states that the purpose of its filing is to establish and implement a Gas Liquids Bank (NGL Bank) as a part of its tariff. HIOS further proposes that participation in the NGL Bank would be a condition of receiving service on HIOS. HIOS also states that the purpose of the NGL Bank is: (1) To mitigate inequities in gas processing economics that may occur on HIOS as a result of its commingling of gas streams that contain different liquefiable hydrocarbon compositions; and (2) to provide a new service to meet the needs of producers developing gas supply sources rich in liquefiable hydrocarbons.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00198 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 469]

ALLETE, Inc., d/b/a Minnesota Power; Notice of Authorization for Continued Project Operation

November 4, 2003.

On October 30, 2001, ALLETE, Inc., d/b/a Minnesota Power, licensee for the Winton Project No. 469, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 469 is located on the Kawishiwi River in St. Louis and Lake Counties, Minnesota.

The license for Project No. 469 was issued for a period ending October 31, 2003. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a

project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 469 is issued to Minnesota Power for a period effective November 1, 2003 through October 31, 2004, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 1, 2004, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Minnesota Power is authorized to continue operation of the Winton Project No. 469 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00206 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–37–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

November 5, 2003.

Take notice that on October 31, 2003, National Fuel Gas Supply Corporation (National) tendered for filing has part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifty-Eighth Revised Sheet No. 9, with an effective date of November 1, 2003.

National states that Article II, sections 1 and 2 of the settlement provide that National will recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. Further, section 2, of Article II provides that the IG rate will be the recalculated monthly rate, commencing on the first day of the following month, if the result is an IG rate more than 2 cents above or below the IG rate as calculated under section 1 of Article II. National states that the recalculation produced as IG rate of $0.43 per dth. In addition, Article II, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

National states that copies of this filing have been served upon all customers on the service list and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00190 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-560-002]

OkTex Pipeline Company; Notice of Compliance Filing

November 4, 2003.

Take notice that on October 30, 2003, OkTex Pipeline Company (OkTex), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of July 1, 2003:

Second Substitute Sixth Revised Sheet No. 40D; and

Third Revised Sheet No. 60C

OkTex states that the filing is being made in compliance with the Commission's directives in Docket No. RP03–560–001.

OkTex states that the tariff sheets reflect the changes to OkTex's tariff that result from the North American Standards Board's (NAESB) consensus standards that were adopted by the Commission in its March 12, 2003, Order No. 587–R in Docket No. RM96–1–024 and the Recommendations in R02002 and R02002–2 of the NAESB Wholesale Gas Quadrant (WGQ). OkTex states that it will implement the NAESB consensus standards for July 1, 2003, business, and that the revised tariff sheets therefore reflect an effective date of July 1, 2003.

OkTex states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00207 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 233]

Pacific Gas and Electric Company; Notice of Authorization for Continued Project Operation

November 4, 2003.

On October 19, 2001, Pacific Gas and Electric Company, licensee for the Pit 3, 4, and 5 Project No. 233, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 233 is located on the Pit River in Shasta County, California.

The license for Project No. 233 was issued for a period ending October 31, 2003. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 233 is issued to Pacific Gas and Electric Company for a period effective November 1, 2003 through October 31, 2004, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 1, 2004, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Pacific Gas and Electric Company is authorized to continue operation of the Pit 3, 4, and 5 Project No. 233 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00205 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-518-052]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

November 5, 2003.

Take notice that on October 31, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, with an effective date of November 1, 2003:

Twentieth Revised Sheet No. 15
Second Revised Sheet No. 17
Fourth Revised Sheet No. 19
Third Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 21A
Fourth Revised Sheet No. 21B

GTN states that these sheets are being filed to update GTN's reporting of negotiated rate transactions that it has entered into. GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00189 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–43–000]

Southern LNG Inc.; Notice of Proposed Changes to FERC Gas Tariff

November 5, 2003.

Take notice that on October 31, 2003, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised sheets, with an effective date of December 1, 2003:

Seventh Revised Sheet No. 5
Seventh Revised Sheet No. 6

SLNG states that the revised sheets are being filed in accordance with Section 24.2 of SLNG's Tariff to reflect changes in the electric power cost adjustment (EPCA) in SLNG's rates. SLNG proposes to lower the EPCA rate from $0.0352/Dth to $0.0305/Dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00196 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–42–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

November 5, 2003.

Take notice that on October 31, 2003, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised tariff sheets to become effective December 1, 2003:

Third Revised Sheet No. 107
Second Revised Sheet No. 108
Original Sheet No. 108A
First Revised Sheet No. 109
First Revised Sheet No. 212I.05
First Revised Sheet No. 212I.06
First Revised Sheet No. 212I.07

Southern states that the goal of the new quality standard is to maximize the availability and utilization of the Southern system without jeopardizing its operational integrity. The new quality standard achieved this goal through the implementation of several new procedures.

Southern has requested to place the new quality standard and related changes into effect on December 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00195 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–45–000]

Trunkline Gas Company, LLC; Notice of Tariff Filing

November 5, 2003.

Take notice that on October 31, 2003, Trunkline Gas Company, LLC (Trunkline) tendered for filing its Annual Interruptible Storage Revenue Credit Surcharge Adjustment in accordance with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No.1.

Trunkline states that the purpose of this filing is to comply with section 24 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1 which requires that at least 30 days prior to the effective date of adjustment, Trunkline shall make a filing with the Commission to reflect the adjustment, if any, required to Trunkline's Base Transportation Rates to reflect the result of the Interruptible Storage Revenue Credit Surcharge Adjustment.

Trunkline further states that no adjustment is required to the Base Transportation Rates because the Surcharge Adjustment is less than one cent per dekatherm.

Trunkline states that copies of this filing are being served on all affected shippers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00197 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–35–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

November 4, 2003.

Take notice that on October 30, 2003, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 724, with an effective date of November 1, 2003.

Williston Basin states that it is submitting its non-conforming and/or negotiated Rate Schedule FT–1 service agreements associated with its Grasslands Pipeline Project in Docket Nos. CP02–37–000, et al.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00204 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–39–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 5, 2003.

Take notice that on October 31, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 30, 2003:

First Revised Sixth Revised Sheet No. 39
First Revised Sixth Revised Sheet No. 46
Sixth Revised Sheet No. 318

Columbia Gulf states it is making the filing to allow it to mutually agree with shippers, on a not unduly discriminatory basis, to combine multiple service agreements under the same rate schedule with varying terms of service for different contract demand quantities into a single service agreement for purposes of increased administrative ease in nominating daily service requirements on the pipeline. Columbia Gulf's proposed revisions are entirely voluntary on the shipper's part and will not expand or restrict any other shipper's existing firm service rights or obligations under any other provisions of Columbia Gulf's Tariff.

Columbia Gulf states that copies of this filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00192 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of New Docket Prefix ''MO''

November 5, 2003.

Notice is hereby given that a new docket prefix ''MO'' has been established to identify Issuances related to Market Oversight activities.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00202 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF04–5191–000, et al.]

United States Department of Energy, et al.; Electric Rate and Corporate Filings

November 4, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. United States Department of Energy; Western Area Power Administration

[Docket No. EF04—5191–000]

Take notice that on October 29, 2003, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–108, did confirm and approve on an interim basis, to be effective on December 31, 2003, the Western Area Power Administration's (Western) extension of the existing firm point-to-point transmission rate of $17.23/kilowattyear for the AC Intertie 500-kV transmission system, the firm point-to-point transmission service rate of $12.00/kilowattyear for the AC Intertie 230/345-kV transmission system, and the nonfirm point-to-point transmission service rate of 2.00 mills/kilowatthour for the AC Intertie 230/345/500-kV transmission system, effective December 31, 2003, and ending December 31, 2006.

The Deputy Secretary of the Department of Energy states that the rates for the AC Intertie Project will be in effect pending the Federal Energy Regulatory Commission's (Commission) approval of the extension of these or of substitute rates on a final basis.

Comment Date: November 19, 2003.

2. Mountain View Power Partners III, LLC

[Docket No. EG04–7–000]

Take notice that on October 29, 2003, Mountain View Power Partners III, LLC (Mountain View) filed with the Federal Energy Regulatory Commission (Commission) an application for Commission determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Mountain View states that it is a limited liability company organized under the laws of the State of Delaware and is a wholly owned subsidiary of PPM Energy, Inc. (PPM), an Oregon corporation. Mountain View states that PPM is a wholly owned subsidiary of PacifiCorp Holdings, Inc. (PHI), a Delaware corporation with general

offices in Portland, Oregon and that PHI is a wholly owned subsidiary of NA General Partnership (NAGP), a Nevada general partnership. Mountain View also states that NAGP's two partners are ScottishPower NA 1 Limited and ScottishPower NA 2 Limited and that they are private limited companies incorporated in Scotland and are wholly owned subsidiaries of ScottishPower plc, a public limited corporation organized under the laws of Scotland.

Mountain View states that it is in the business of developing, and will construct, own, and operate an approximately 22.44-megawatt wind-powered electric generation facility in Riverside County, California (the Project). Mountain View states that the Project will be an eligible facility pursuant to Section 32(a)(2) of the Public Utility Holding Company Act of 1935, and as such, Mountain View will be engaged directly and exclusively in the business of owning and/or operating one or more eligible facilities and selling electric energy from the Project at wholesale at market-based rates.

Mountain View states that it has served a copy of this filing on the Securities and Exchange Commission, and on the California Public Utilities Commission, the Oregon Public Utility Commission, the Washington Utilities and Transportation Commission, the Utah Public Service Commission, the Idaho Public Utilities Commission, and the Wyoming Public Service Commission as ''affected state commissions'' under 18 CFR 365.2(b)(3).

Comment Date: November 19, 2003.

3. Goldendale Energy Center, LLC

[Docket No. EG04–8–000]

Take notice that on October 29, 2003, Goldendale Energy Center, LLC (Goldendale) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Goldendale states that it is a Delaware limited liability company, and proposes to own and operate a nominal 248 megawatt combined-cycle power generation plant to be located in Goldendale, Washington, and sell the output at wholesale. Goldendale further states that copies of the application were served upon the U.S. Securities and Exchange Commission and Washington Utilities and Transportation Commission.

Comment Date: November 19, 2003.

4. Texas-New Mexico Power Company, Complainant; v. El Paso Electric Company, Respondent

[Docket No. EL04–15–000]

Take notice that on November 3, 2003, Texas-New Mexico Power Company (TNMP) filed a complaint under Section 206 of the Federal Power Act against El Paso Electric Company (EPE), seeking a Commission order directing EPE to allow TNMP to exercise its rollover rights under a pre-Order No. 888, bundled power sales agreement between TNMP and EPE. TNMP requests that the Commission act on its complaint under the fast-track processing procedures of Rule 206(h) of the Commission's Rules of Practice and Procedure, 18 CFR 385.206(h).

TNMP states that the complaint was served on El Paso Electric Company and the New Mexico Public Regulatory Commission.

Comment Date: November 17, 2003.

5. Indianapolis Power & Light Company

[Docket No. ER00–1026–006]

Take notice that on October 28, 2003, Indianapolis Power & Light Company (Indianapolis Power), pursuant to the Commission's Order in Docket No. ER00–1026–000, tendered for filing its triennial market power update.

Indianapolis Power states that copies of the filing were served upon the parties designated on the official service list.

Comment Date: November 18, 2003.

6. New York State Electric & Gas Corporation

[Docket No. ER03–587–002]

Take notice that on October 30, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to the Commission's April 28, 2003 Order in Docket No. ER03–587–000, FERC Rate Schedule 33 between NYSEG and Orange and Rockland Utilities, Inc. consistent with the requirements of Order No. 614.

Comment Date: November 20, 2003.

7. New York State Electric & Gas Corporation

[Docket No. ER03–587–003]

Take notice that on October 30, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to the Commission's Order issued April 28, 2003 in Docket No. ER03–587–000, FERC Rate Schedule 35 between NYSEG and Consolidated Edison Company of New York, Inc. consistent with the requirements of Order No. 614.

Comment Date: November 20, 2003.

8. New York State Electric & Gas Corporation

[Docket No. ER03–587–004]

Take notice that on October 30, 2003, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to FERC's April 28, 2003 Order in Docket No. ER03–587–000, FERC Rate Schedule 28 between NYSEG and NMPC consistent with the requirements of Order No. 614.

Comment Date: November 20, 2003.

9. Yankee Atomic Electric Co.

[Docket No. ER03–704–001]

Take notice that on October 29, 2003, in compliance with the Commission's October 2, 2003 Order in Docket No. ER03–704–000 (Yankee Atomic Electric Company, 105 FERC ¶61,007 (2003), Yankee Atomic Electric Company submitted a revised Power Contract—Yankee Atomic Electric Company, Rate Schedule FERC No. 3.

Comment Date: November 19, 2003.

10. Entergy Services, Inc.

[Docket No. ER03–1140–002]

Take notice that on October 29, 2003, Entergy Services, Inc., (Entergy) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) filed a compliance filing incorporating revisions to the creditworthiness provisions of Entergy's Open Access Transmission Tariff as required by the Federal Energy Regulatory Commission's September 29, 2003 order, Entergy Services, Inc., 104 FERC ¶61,329, issued in Docket No. ER03–1140–000.

Comment Date: November 19, 2003.

11. New England Power Pool and ISO New England Inc.

[Docket Nos. ER03–1141–001 and EL03–222–001]

Take notice that on October 29, 2003, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc. (ISO–NE), submitted for filing responses to certain data requests from the Commission. The responses amend the filing made on July 31, 2003 by NEPOOL and ISO–NE in Docket No. ER03–1141–000.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: November 19, 2003.

12. Midwest Energy, Inc.

[Docket No. ER03–1172–001]

Take notice that on October 30, 2003, Midwest Energy, Inc. (Midwest) submitted for filing corrected FERC Rate Schedule No. 19, a Transmission Service Agreement between Midwest and the Kansas Electric Power Cooperative, Inc. (KEPCo) in compliance with the Commission's Order issued September 24, 2003 in Docket No. ER03–1172–000.

Midwest states that a copy of this filing was served upon the Kansas Corporation Commission and KEPCo.

Comment Date: November 20, 2003.

13. Palama, LLC

[Docket No. ER03–1316–001]

Take notice that on October 28, 2003, Palama, LLC (Palama) filed an amendment to its application for market-based rates filed on September 4, 2003. Palama states that the amendment supplies additional information requested in an October 22, 2003 deficiency letter by the Commission including a properly designated Palama market-base rate schedule.

Comment Date: November 18, 2003.

14. Williams Power Company, Inc.

[Docket No. ER03–1331–001]

Take notice that on October 29, 2003, Williams Power Company, Inc. (WPC) submitted for filing an amendment to the Notice of Succession, filed September 12, 2003 in Docket No. ER03–1331–000.

Comment Date: November 19, 2003.

15. Craven County Wood Energy Limited Partnership

[Docket No. ER03–1379–001]

Take notice that on October 28, 2003, Craven County Wood Energy limited Partnership (Craven) submitted supplemental materials in connection with its September 25, 2003 filing of an amendment to a Rate Schedule in Docket No. ER03–1379–000.

Comment Date: November 18, 2003.

16. Nicor Energy, L.L.C.

[Docket No. ER04–17–001]

Take notice that on October 28, 2003, Nicor Energy, L.L.C. (Nicor) pursuant to § 35.15, 18 CFR 35.15, of the Commission's Regulations, filed with the Federal Energy Regulatory Commission an Amended Notice of Cancellation of Nicor's Market-Based FERC Electric Rate Tariff and all rate schedules and/or service agreements thereunder effective October 1, 2003.

Comment Date: November 13, 2003.

17. Idaho Power Company

[Docket No. ER04–75–001]

Take notice that on October 30, 2003, Idaho Power Company (Idaho Power) submitted an amendment to its October 24, 2003 filing in Docket No. ER04–75–000.

Comment Date: November 20, 2003.

18. Vermont Electric Cooperative, Inc.

[Docket No. ER04–89–000]

Take notice that on October 28, 2003, Vermont Electric Cooperative, Inc. (VEC) tendered for filing its Initial Rate Filing and Request for Certain Waivers. VEC's filing includes a Power Transmission Contract between VEC and Central Vermont Public Service Corporation (CVPS) dated March 16, 1981, designated as FERC Rate Schedule No. 1.

CVPS, the Vermont Public Service Board, and the Vermont Department of Public Service were mailed copies of the filing.

Comment Date: November 18, 2003.

19. PSI Energy, Inc.

[Docket No. ER04–90–000]

Take notice that on October 28, 2003, PSI Energy, Inc. (PSI) tendered for filing under Section 205 of the Federal Power Act, an amendment to an interconnection agreement between Hoosier Energy Rural Electric Cooperative, Inc., Southern Indiana Gas and Electric Company and PSI.

PSI Energy, Inc. states that copies of this filing have been served on Hoosier Energy Rural Electric Cooperative, Inc., Southern Indiana Gas and Electric Company, and the Indiana Utility Regulatory Commission.

Comment Date: November 18, 2003.

20. New York Independent System Operator, Inc.

[Docket No. ER04–91–0000]

Take notice that on October 28, 2003, the New York Independent System Operator, Inc. (NYISO) submitted proposed revisions to it Open Access Transmission Tariff to addressing the method by which it charges third party suppliers of Station Power for Ancillary Services. The NYISO has requested that its filing be permitted to become effective on March 22, 2003.

The NYISO states that it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's OATT and Services Tariff.

Comment Date: November 18, 2003.

21. Xcel Energy Services Inc.; Northern States Power Company

[Docket No. ER04–92–000]

Take notice that on October 29, 2003, Xcel Energy Services Inc. (XES), on behalf of Northern States Power Company (NSP), submitted for filing a Generation Interconnection Agreement between NSP and Moraine Wind, LLC.

NSP requests the agreement to be accepted for filing effective November 4, 2002, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

Comment Date: November 19, 2003.

22. Xcel Energy Services, Inc.; Northern States Power Company

[Docket No. ER04–93–000]

Take notice that on October 29, 2003, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company (NSP) submitted for filing a Generation Interconnection Agreement between NSP and Chanarambie Power Partners, LLC.

NSP requests the agreement be accepted for filing effective December 17, 2002, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment Date: November 19, 2003.

23. Mountain View Power Partners III, LLC

[Docket No. ER04–94–000]

Take notice that on October 28, 2003, Mountain View Power Partners III, LLC (Mountain View III) filed with the Federal Energy Regulatory Commission (Commission) pursuant to Section 205 of the Federal Power Act an Application for an Order Accepting Initial Rate Schedule, which would allow Mountain View III to engage in the sale of electric energy and capacity at market-based rates. Mountain View III states it is engaged in the business of developing, and will construct, own, and operate, a 22.44-megawatt wind-powered generation facility located in Riverside County, California. Mountain View III states that it seeks certain waivers, blanket approvals, and authorizations under the Commission's regulations. Mountain View III also seeks expedited review and a waiver of the 60-day notice requirement under 18 CFR 35.3.

Comment Date: November 18, 2003.

24. Central Vermont Public Service Corporation

[Docket No. ER04–95–000]

Take notice that on October 29, 2003, Central Vermont Public Service Corporation (Central Vermont) tendered

for filing revised tariff pages (Revised Pages) to its Open Access Transmission Tariff (OATT) to reflect the disposition of Connecticut Valley Electric Company Inc.'s (CVEC) jurisdictional facilities to the Public Service Company of New Hampshire (PSNH) and to make technical modifications to Central Vermont's formula rates.

Central Vermont respectfully requests that the Commission allow the Revised Pages to become effective January 1, 2004, the date that the disposition of facilities is to be consummated.

Central Vermont states that copies of the filing were served upon Central Vermont's OATT customers, PSNH, CVEC, the Vermont Public Service Board, and the New Hampshire Public Utilities Commission.

Comment Date: November 19, 2003.

25. Southern California Edison Company

[Docket No. ER04–96–000]

Take notice, that on October 29, 2003, Southern California Edison Company (SCE) tendered for filing the Interconnection Facilities Agreement (Interconnection Agreement) between SCE and the City of Corona, California (Corona). SCE states that the Interconnection Agreement specifies the terms and conditions, pursuant to which SCE will design, construct, install, and own the Interconnection Facilities necessary to interconnect Corona's distribution system serving Corona's Wholesale Distribution Load at Corona Pointe and Corona Crossroads to SCE's Distribution System. SCE requests that the Interconnection Agreement become effective on October 15, 2003.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, and Corona.

Comment Date: November 19, 2003.

26. Watt Works LLC

[Docket No. ER04–98–000]

Take notice that on October 29, 2003, Watt Works LLC (Watt) tendered for filing a Notice of Cancellation of its Market-based Rate Authority granted in Docket No. ER97–2592–000.

Comment Date: November 19, 2003.

27. Northern/AES Energy, LLC

[Docket No. ER04–102–000]

Take notice that, on October 29, 2003, Northern/AES Energy, LLC (Northern) filed a Notice of Cancellation of its FERC Electric Tariff, Rate Schedule FERC No. 1 accepted under Docket No. ER93–445–000. Northern requests that this Notice of Cancellation be effective as of October 29, 2003.

Comment Date: November 19, 2003.

28. Union Electric Development Corporation

[Docket No. ER04–104–000]

Take notice that on October 30, 2003, Union Electric Development Corporation (UEDC) tendered for filing a Notice of Cancellation of its Market-based Rate Authority granted under Docket No. ER97–3663–000. UEDC request an effective date of September 17, 2003.

Comment Date: November 20, 2003.

29. DC Tie, Inc.

[Docket No. ER04–105–000]

Take notice that on October 29, 2003, DC Tie, Inc. tendered for filing a Notice of Cancellation of its Market-based rate tariff originally granted under Docket No. ER91–435–000. DC Tie, Inc is requesting an effective date of October 28, 2003.

Comment Date: November 19, 2003.

30. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER04–107–000]

Take notice that on October 30, 2003, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing an amendment to First Revised Service Agreement No. 2 under Deseret's FERC Electric Tariff, Original Volume 1. Deseret states that the amendment includes an Agreement for Large Industrial Incentive Rate between Deseret and one of its members, Dixie-Escalante Rural Electric Association, Inc., implementing Deseret Rate Schedule DRAE-Wells. Deseret requests an effective date of November 1, 2003.

Deseret states that copies of this filing have been served upon Deseret's member cooperatives.

Comment Date: November 20, 2003.

31. American Transmission Company LLC; Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–108–000]

Take notice that on October 30, 2003, American Transmission Company LLC (ATCLLC) and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing changes to Attachment O of the Midwest ISO(s Open Access Transmission Tariff, to modify the rate formula for calculating rates for transmission service within the ATCLLC transmission system. ATCLLC and the Midwest ISO request an effective date of January 1, 2004.

The Midwest ISO seeks waiver of the Commission(s regulations,18 CFR 385.2010 with respect to service on all required parties. The Midwest ISO states that it has electronically served a copy of this filing upon all Midwest ISO members, members representatives of Transmission Owners and Non-Transmission owners, the Midwest ISO Advisory Committee participants, as well as all state Commissioners within the region. The Midwest ISO also states it has posted this filing on its Internet site at *http://www.midwestiso.org*, and the Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: November 20, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (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. E3–00203 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1895–025]

City of Columbia, Columbia Hydroelectric Project; Notice Rejecting Request for Rehearing

November 4, 2003.

On September 4, 2003, the Director, Division of Hydropower Administration and Compliance, issued an order granting the licensee for the Columbia Hydroelectric Project No. 1875 an extension of time to comply with the requirements of Articles 202, 401, 406, 407, 411, 412 and 413 of the project license.[1] On October 2, 2003, South Carolina Coastal Conservation League and American Rivers (Conservation Groups) filed a request for limited rehearing of that order.

Pursuant to section 313(a) of the Federal Power Act, 16 U.S.C. 8251(a), a request for rehearing may be filed only by a party to the proceeding. In order for Conservation Groups to be a party to the proceeding, it must have timely filed motion to intervene pursuant to Rule 214 of the Rules of Practice and Procedure, 18 CFR 385.214.[2] Conservation Groups asks that the Commission ''waive the requirement that a person requesting rehearing already have party status.''[3] Because the requirement is statutorily based, it cannot be waived, and Conservation Groups' request for rehearing must therefore be rejected.

Conservation Groups' rehearing request would be rejected in any event. With regard to post-licensing proceedings, the Commission only entertains motions to intervene where the filing entails a material change in the plan of project development or in the terms of the license, or would adversely affect the rights of property holder in a manner not contemplated by the license, or involves an appeal by an agency or entity specifically given a consultation role.[4] The timing of a compliance filing is an administrative matter between the licensee and the Commission, and does not alter the substantive obligations of the licensee.[5] It therefore does not give rise to an opportunity for intervention and rehearing.

This notice constitutes final agency action. Request for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00208 Filed 11–12–03; 8:45 am]

BILLING CODE 6717–01–P

[1] These articles require licensee to file aperture cards of the approved Exhibit G drawings; documentation of an agreement regarding land for recreation facilities; a report documenting consultation with the River Alliance of the feasibility of a canoe put-in; and, for Commission approval, various project plans.

[2] *See* Pacific Gas and Electric Company, 40 FERC ¶61,035 (1987).

[3] Rehearing request at p. 2.

[4] Kings River Conservation District, 36 FERC ¶61,365 (1986).

[5] City of Tacoma, Washington, 89 FERC ¶61,058 (1999). The only exception would be if the license articles specifically state that Conservation Groups must be consulted on extensions of deadlines set forth in the articles. Id. at 61,194 n. 9. Such is not the case here.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Notice

November 6, 2003.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 13, 2003, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*** Note:** Items listed on the agenda may be deleted without further notice.

FOR FURTHER INFORMATION CONTACT: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

844th—Meeting November 13, 2003, Regular Meeting 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters.

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations.

A–3.
Docket# MO04–1, 000, Report on Winter Energy Market Assessments.

Markets, Tariffs and Rates—Electric

E–1.
Docket# EL03–212, 000, Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company
American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company
Dayton Power and Light Company
Exelon Corporation of behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.
First Energy Corporation on behalf of: American Transmission Systems, Inc.
Illinois Power Company and Northern Indiana Public Service Company
Other#s EL03–212, 001, Ameren Services Company on behalf of:Union Electric Company and Central Illinois Public Service Company
American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company
Dayton Power and Light Company
Exelon Corporation of behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.
First Energy Corporation on behalf of: American Transmission Systems, Inc.
Illinois Power Company and Northern Indiana Public Service Company

E–2.
Docket# EL02–111, 004, Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., and all Transmission Owners (including the entities identified below) Union Electric Company, Central Illinois Public Service Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Michigan Electric Transmission Company, Dayton Power and Light Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., American Transmission Systems, Inc., Illinois Power Company, Northern Indiana Public Service Company, Virginia Electric and Power Company, IES Utilities, Inc., Interstate Power Company, Aquila, Inc. (formerly UtiliCorp United, Inc.), PSI Entergy, Inc., Union Light Heat & Power Company, Dairyland Power Cooperative, Great River Energy, Hoosier Energy Rural Electric Cooperative, Indiana Municipal

Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc., and its subsidiary Superior Water, Light & Power Company, Montana-Dakota Utilities, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, GPU Energy, Northeast Utilities Service Company, Old Dominion Electric Cooperative, Public Service Company of Colorado, Public Service Electric & Gas Company, Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG&E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.

Other#S EL02–111, 005, Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., and all Transmission Owners (including the entities identified below) Union Electric Company, Central Illinois Public Service Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Michigan Electric Transmission Company, Dayton Power and Light Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., American Transmission Systems, Inc., Illinois Power Company, Northern Indiana Public Service Company, Virginia Electric and Power Company, IES Utilities, Inc., Interstate Power Company, Aquila, Inc. (formerly UtiliCorp United, Inc.), PSI Entergy, Inc., Union Light Heat & Power Company, Dairyland Power Cooperative, Great River Energy, Hoosier Energy Rural Electric Cooperative, Indiana Municipal Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc., and its subsidiary Superior Water, Light & Power Company, Montana-Dakota Utilities, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, GPU Energy, Northeast Utilities Service Company, Old Dominion Electric Cooperative, Public Service Company of Colorado, Public Service Electric & Gas Company, Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG&E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.

EL02–111, 006, Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., and all Transmission Owners (including the entities identified below) Union Electric Company, Central Illinois Public Service Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Michigan Electric Transmission Company, Dayton Power and Light Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., American Transmission Systems, Inc., Illinois Power Company, Northern Indiana Public Service Company, Virginia Electric and Power Company, IES Utilities, Inc., Interstate Power Company, Aquila, Inc. (formerly UtiliCorp United, Inc.), PSI Entergy, Inc., Union Light Heat & Power Company, Dairyland Power Cooperative, Great River Energy, Hoosier Energy Rural Electric Cooperative, Indiana Municipal Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc., and its subsidiary Superior Water, Light & Power Company, Montana-Dakota Utilities, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, GPU Energy, Northeast Utilities Service Company, Old Dominion Electric Cooperative, Public Service Company of Colorado, Public Service Electric & Gas Company, Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG&E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.

EL02–111, 007, Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., and all Transmission Owners (including the entities identified below) Union Electric Company, Central Illinois Public Service Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Michigan Electric Transmission Company, Dayton Power and Light Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., American Transmission Systems, Inc., Illinois Power Company, Northern Indiana Public Service Company, Virginia Electric and Power Company, IES Utilities, Inc., Interstate Power Company, Aquila, Inc. (formerly UtiliCorp United, Inc.), PSI Entergy, Inc., Union Light Heat & Power Company, Dairyland Power Cooperative, Great River Energy, Hoosier Energy Rural Electric Cooperative, Indiana Municipal Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc., and its subsidiary Superior Water, Light & Power Company, Montana-Dakota Utilities, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, GPU Energy, Northeast Utilities Service Company, Old Dominion Electric Cooperative, Public Service Company of Colorado, Public Service Electric & Gas Company, Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG&E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.

Electric Cooperative, Indiana Municipal Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc., and its subsidiary Superior Water, Light & Power Company, Montana-Dakota Utilities, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, GPU Energy, Northeast Utilities Service Company, Old Dominion Electric Cooperative, Public Service Company of Colorado, Public Service Electric & Gas Company, Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG&E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.

EL02–111, 008, Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., and all Transmission Owners (including the entities identified below) Union Electric Company, Central Illinois Public Service Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Michigan Electric Transmission Company, Dayton Power and Light Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., American Transmission Systems, Inc., Illinois Power Company, Northern Indiana Public Service Company, Virginia Electric and Power Company, IES Utilities, Inc., Interstate Power Company, Aquila, Inc. (formerly UtiliCorp United, Inc.), PSI Entergy, Inc., Union Light Heat & Power Company, Dairyland Power Cooperative, Great River Energy, Hoosier Energy Rural Electric Cooperative, Indiana Municipal Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc., and its subsidiary Superior Water, Light & Power Company, Montana-Dakota Utilities, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, GPU Energy, Northeast Utilities Service Company, Old Dominion Electric Cooperative, Public Service Company of Colorado, Public Service Electric & Gas Company, Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG&E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.

EL03–212, 000, Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company

American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company

Dayton Power and Light Company

Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.

First Energy Corporation on behalf of: American Transmission Systems, Inc.

Illinois Power Company and Northern Public Service Company

EL04–4, 000, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company

Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company v. Midwest Independent Transmission System Operator, Inc.

EL04–5, 000, American Electric Power Service Corporation *et al.*, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company v. PJM Interconnection, LLC

EL04–6, 000, American Electric Power Service Corporation, *et al.*, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company v. Ameren Services Company

EL04–7, 000, American Electric Power Service Corporation, *et al.*, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company v. Illinois Power Company

EL04–8, 000, American Electric Power Service Corporation, *et al.*, Commonwealth Edison Company, and Commonwealth Edison Company of Indiana, Inc., v. Dayton Power and Light Company

EL04–9, 000, American Electric Power Service Corporation *et al.*, and Dayton Power and Light Company v. Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.

EL04–10, 000, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company v. American Electric Power Service Corporation, *et al.*,

E–3.

Docket# EL01–118, 000, Investigation of Terms & Conditions of Public Utility Market-Based Rate Authorizations

Other#s EL01–118, 001, Investigation of Terms & Conditions of Public Utility Market-Based Rate Authorizations

E–4.

Omitted

E–5.

Docket# ER03–1318, 000, New England Power Pool and ISO-New England Inc.

Other#s ER03–1318, 001, New England Power Pool and ISO-New England Inc.

E–6.

Omitted

E–7.

Docket# PL03–1, 000, Pricing Policy for Efficient Operation and Expansion of the Transmission Grid

E–8.

Omitted

E–9.

Docket# ER03–1381, 000, Southern Company Services, Inc

E–10.

Omitted

E–11.

Docket# ER03–1386, 000, Cleco Power LLC

E–12.
Omitted
E–13.
Omitted
E–14.
Omitted
E–15.
Docket# ER03–1345, 000, Midwest Independent Transmission System Operators, Inc.
E–16.
Docket# ER03–312, 000, Pacific Gas and Electric Company
E–17.
Omitted
E–18. Docket# ER02–851, 008, Southern Company Services, Inc.
E–19.
Omitted
E–20.
Docket# ER97–1523, 072, Central Hudson Gas & Electric Corporation, Consolidated Edison Co. of New York, Inc., Long Island Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation
Other#s OA97–470, 067, Central Hudson Gas & Electric Corporation, Consolidated Edison Co. of New York, Inc., Long Island Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation
ER97–4234, 065, Central Hudson Gas & Electric Corporation, Consolidated Edison Co. of New York, Inc., Long Island Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation
E–21.
Docket# ER97–1523, 079, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
Other#s OA97–470, 071, Central Hudson Gas & Electric Corporation Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
ER97–4234, 069, Central Hudson Gas & Electric Corporation Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
E–22.
Docket# ER01–414, 002, Consumers Energy Company, on behalf of Michigan Electric Transmission Company
E–23.
Docket# EL00–95, 082, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
Other#s EL00–98, 070, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
E–24.
Docket# EL03–51, 001, North Hartland, LLC
E–25.
Omitted
E–26.
Omitted
E–27.
Docket# ER03–414, 002, Progress Energy Carolinas, Inc
Other#s ER03–414, 001, Progress Energy Carolinas, Inc
ER03–415, 001, Progress Energy Carolinas, Inc
ER03–415, 002, Progress Energy Carolinas, Inc
E–28.
Docket# ER03–19, 002, Detroit Edison Company
Other#s RT01–101, 007, International Transmission Company and DTE Energy Company
EC01–146, 007, International Transmission Company and DTE Energy Company
ER01–3000, 007, International Transmission Company and DTE Energy Company
E–29.
Omitted
E–30.
Omitted
E–31.
Docket# ER03–218, 004, California Independent System Operator Corporation
Other#s EC03–81, 001, California Independent System Operator Corporation
ER03–219, 004, California Independent System Operator Corporation
E–32.
Omitted
E–33.
Omitted
E–34.
Docket# ER03–583, 003, Entergy Services, Inc., and EWO Marketing, LP
Other#s ER03–681, 002, Entergy Services, Inc., and Entergy Power, Inc.
ER03–682, 003, Entergy Services, Inc., and Entergy Power, Inc.
ER03–744, 002, Entergy Services, Inc., and Entergy Louisiana, Inc.
E–35.
Docket# ER02–2330, 015, New England Power Pool and ISO New England, Inc.
Other#s ER02–2330, 016, New England Power Pool and ISO New England, Inc.
ER02–2330, 017, New England Power Pool and ISO New England, Inc.
E–36.
Omitted
E–37.
Docket# EL02–128, 003, Sithe New England Holdings, LLC v. ISO New England, Inc.
Other#s EL02–128, 002, Sithe New England Holdings, LLC v. ISO New England, Inc.
E–38.
Docket# EL02–65, 012, Alliance Companies, Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company
American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company
Dayton Power and Light Company, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.
FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., Cleveland Electric Illuminating Power Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company
Illinois Power Company, Northern Indiana Public Company and National Grid USA
Other#s EC99–80, 022, Alliance Companies Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company
American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company
Consumers Energy Company and the Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company
ER99–3144, 022, Alliance Companies
Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company
American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company
Consumers Energy Company and the Michigan Electric Transmission Company, Dayton Power and Light Company, Detroit Edison Company and International Transmission Company
RT01–26, 006, Northern Indiana Public Service Company
RT01–37, 006, Dayton Power and Light Company
RT01–84, 006, Illinois Power Company
RT01–88, 023, Alliance Companies, Ameren Services Company on behalf of: Union Electric Company and Central Illinois Public Service Company
American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern

Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company
Consumers Energy Company and Michigan Electric Transmission Company, Dayton Power and Light Company,
Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.
FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., Cleveland Electric Illuminating Power Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company
Illinois Power Company, Northern Indiana Public Service Company and Virginia Electric and Power Company
ER01–123, 010, Illinois Power Company
ER01–2992, 005, Exelon Corporation on behalf of: Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.
FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., Cleveland Electric Illuminating Power Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company
ER01–2993, 005, Virginia Electric and Power Company
ER01–2995, 005, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company
ER01–2997, 005, Dayton Power and Light Company
ER01–2999 005 Illinois Power Company
EL02–111, 003, Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., and all Transmission Owners (including the entities identified below) Union Electric Company, Central Illinois Public Service Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Michigan Electric Transmission Company, Dayton Power and Light Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., American Transmission Systems, Inc., Illinois Power Company, Northern Indiana Public Service Company, Virginia Electric and Power Company, IES Utilities, Inc., Interstate Power Company, Aquila, Inc. (formerly UtiliCorp United, Inc.), PSI Entergy, Inc., Union Light Heat & Power Company, Dairyland Power Cooperative, Great River Energy, Hoosier Energy Rural Electric Cooperative, Indiana Municipal Power Agency, Indianapolis Power & Light Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Lincoln Electric (Neb.) System, Minnesota Power, Inc., and its subsidiary Superior Water, Light & Power Company, Montana-Dakota Utilities, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Cooperative, Southern Minnesota Municipal Power Agency, Sunflower Electric Power Corporation, Wabash Valley Power Association, Inc., Wolverine Power Supply Cooperative, International Transmission Company, Alliant Energy West, Xcel Energy Services, Inc., MidAmerican Energy Company, Corn Belt Power Corporation, Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, UGI Utilities, Inc., Allegheny Power, Carolina Power & Light Company, Central Power & Light Company, Conectiv, Detroit Edison Company, Duke Power Company, Florida Power & Light Company, GPU Energy, Northeast Utilities Service Company, Ohio Power Company, Old Dominion Electric Cooperative, Public Service Company of Colorado, Public Service Electric & Gas Company, Public Service Company of Oklahoma, Rockland Electric Company, South Carolina Electric & Gas Company, Southwestern Electric Power Company, Cincinnati Gas & Electric Company, Missouri Public Service, WestPlains Energy, Cleco Corporation, Kansas Power & Light Company, OG&E Electric Services, Southwestern Public Service Company, Empire District Electric Company, Western Resources and Kansas Gas & Electric Co.

E–39.
Omitted

E–40.
Docket# ER03–746, 002, California Independent System Operator Corporation
Other#s ER03–746, 001, California Independent System Operator Corporation

E–41.
Omitted

E–42.
Docket# EL03–137 *et al.*, 000, American Electric Power Service Corporation, *et al.*
Other#s EL00–95 *et al.*, 000, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent Systems Operator and the California Power Exchange
EL00–98 *et al.*, 000, Investigation of Practices of California Independent System Operator Corporation & The California Power Exchange
PA02–2 *et al.*, 000, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices
EL03–180 *et al.*, 000, Enron Power Marketing, Inc., and Enron Energy Services Inc., *et al.*

E–43.
Docket# EL02–45, 000, California Independent System Operator Corporation

E–44.
Docket# EL03–14, 000, City of Azusa, California
Other#s EL03–15, 000, City of Anaheim, California
EL03–15, 002, City of Anaheim, California
EL03–20, 000, City of Riverside, California
EL03–20, 002, City of Riverside, California
EL03–21, 000, City of Banning, California

E–45.
Docket# EL03–219, 000, Central Iowa Power Cooperative, Clarke Electric Cooperative, Inc., Consumers Energy Cooperative, East-Central Iowa Rural Electric Cooperative, Farmers Electric Cooperative, Inc., Guthrie County Rural Electric Cooperative Association, Marquoketa Valley Electric Cooperative, Midland Power Cooperative, Pella Cooperative Electric Association, Rideta Electric Cooperative, Inc., South Iowa Municipal Electric Cooperative Association; Southwest Iowa Service Cooperative and T.I.P. Rural Electric Cooperative

E–46.
Docket# EL03–53, 000, Gregory Swecker v. Midland Power Cooperative

E–47.
Omitted

E–48.
Omitted

E–49.
Docket# EL03–26, 000, New York Independent System Operator, Inc. v. Dynegy Power Marketing, Inc.

E–50.
Docket# EG03–109, 000, High Desert Power Project, LLC
Other#s EG03–110, 000, High Desert Power Trust

E–51.
Docket# ER01–2658, 000, American Electric Power Service Corporation
Other#s EL00–79, 000, American Electric Power Service Corporation
EL01–113, 000, American Electric Power Service Corporation
EC01–130, 000, American Electric Power Service Corporation
ER01–2658, 001, American Electric Power Service Corporation
ER01–2668, 000, American Electric Power Service Corporation
ER01–2977, 000, American Electric Power Service Corporation
ER01–2977, 001, American Electric Power Service Corporation
ER01–2980, 000, American Electric Power Service Corporation
ER01–2980, 001, American Electric Power Service Corporation
EL02–24, 000, American Electric Power Service Corporation
ER02–371, 000, American Electric Power Service Corporation
ER02–371, 001, American Electric Power Service Corporation
ER02–371, 002, American Electric Power Service Corporation
ER02–602, 000, American Electric Power System Corporation

ER02–602, 001, American Electric Power Service Corporation
ER02–1216, 000, American Electric Power Service Corporation
ER02–1410, 000, American Electric Power Service Corporation
E–52.
Docket# ER03–1341, 000, Michigan Electric Transmission Company, LLC
E–53.
Docket# ER02–2119, 000, Southern California Edison Company
E–54.
Docket# ER02–2001, 000, Electric Quarterly Reports
Other#s ER94–1246, 000, Ashton Energy Corporation
ER95–751, 000, PowerGasSmart.com, Inc.
ER95–878, 000, Audit Pro Incorporated
ER95–1381, 000, Alliance Strategies
ER95–1399, 000, Electech, Inc.
ER95–1752, 000, Enpower, Inc.
ER96–734, 000, Energy Marketing Services, Inc.
ER96–924, 000, Direct Access Management, LP
ER96–1631, 000, Family Fiber Connection, Inc.
ER96–1731, 000, Engineered Energy Systems Corporation
ER96–1774, 000, Growth Unlimited Investments, Inc.
ER96–1781, 000, EnergyTek, Inc.
ER96–2879, 000, U.S. Energy, Inc.
ER97–1117, 000, TC Power Solutions
ER97–1676, 000, Black Brook Energy Company
ER97–3053, 000, Keystone Energy Services, Inc.
ER97–3815, 000, Friendly Power Company, LLC
ER97–4145, 000, Sigma Energy, Inc.
ER97–4364, 000, PowerCom Energy & Communications Access, Inc.
ER97–4434, 000, Clean Air Capital Markets Corporation
ER97–4680, 000, Starghill Alternative Energy Corporation
ER98–102, 000, Current Energy, Inc.
ER98–1221, 000, Micah Tech Industries, Inc.
ER98–1297, 000, TransCurrent, LLC
ER98–2232, 000, People's Utility Corporation
ER98–2423, 000, The FURSTS Group, Inc.
ER98–3006, 000, K&K Resources, Inc.
ER98–3052, 000, PowerSource Corporation
ER98–3451, 000, American Premier Energy Corporation
ER98–3934, 000, Clinton Energy Management Services, Inc.
ER99–581, 000, Business Discount Plan, Inc.
ER99–823, 000, River City Energy, Inc.
ER99–1890, 000, Commodore Electric
ER99–2540, 000, Full Power Corporation
ER99–2970, 000, Delta Energy Group
ER00–1530, 000, Energy & Stream Company, Inc.
ER01–1414, 000, Northern Lights Power Company
ER01–2059, 000, Entrust Energy, LLC
ER02–893, 000, Dorman Materials, Inc.

Markets, Tariffs and Rates—Gas

G–1.
Docket# RM03–10, 000, Amendments to Blanket Sales Certificates
G–2.
Docket# RP00–241, 000, California Public Utilities Commission
Other#s RP00–241, 006, California Public Utilities Commission
RP00–241, 008, California Public Utilities Commission
G–3.
Docket# RP96–200, 092, CenterPoint Energy Gas Transmission Company
Other#s RP96–200, 097, CenterPoint Energy Gas Transmission Company
RP96–200, 101, CenterPoint Energy Gas Transmission Company
RP96–200, 102, CenterPoint Energy Gas Transmission Company
RP96–200, 103, CenterPoint Energy Gas Transmission Company
RP96–200, 104, CenterPoint Energy Gas Transmission Company
RP96–200, 105, CenterPoint Energy Gas Transmission Company
RP96–200, 106, CenterPoint Energy Gas Transmission Company
RP96–200, 107, CenterPoint Energy Gas Transmission Company
RP96–200, 108, CenterPoint Energy Gas Transmission Company
RP96–200, 110, CenterPoint Energy Gas Transmission Company
RP96–200, 111, CenterPoint Energy Gas Transmission Company
G–4.
Omitted
G–5.
Docket# RP02–116, 001, Northwest Pipeline Corporation
G–6.
Docket# RP00–336, 021, El Paso Natural Gas Company
G–7.
Docket# PR03–12, 000, Overland Trail Transmission, LLC
Other#s PR03–12, 001, Overland Trail Transmission, LLC
G–8.
Docket# GT02–38, 007, Northern Natural Gas Company
G–9.
Docket# RP03–507, 001, Northern Border Pipeline Company
G–10.
Docket# RP03–545, 001, Dominion Cove Point LNG, LP
G–11.
Docket# RP02–114, 003, Tennessee Gas Pipeline Company
Other#s RP02–114, 002, Tennessee Gas Pipeline Company
G–12.
Docket# RP03–465, 002, ANR Pipeline Company
G–13.
Omitted
G–14.
Docket# RP02–183, 001, Transcontinental Gas Pipe Line Corporation
G–15.
Docket# RP02–367, 002, Northern Border Pipeline Company
G–16.
Omitted
G–17.
Docket# OR03–7, 000, Tesoro Refining & Marketing Company v. Frontier Pipeline Company

Energy Projects—Hydro

H–1.
Docket# P–2525, 057, Wisconsin Public Service Corporation
Other#s P–2522, 079, Wisconsin Public Service Corporation
P–2546, 075, Wisconsin Public Service Corporation
P–2560, 058, Wisconsin Public Service Corporation
P–2595, 080, Wisconsin Public Service Corporation
H–2.
Docket# P–2299, 000, Turlock Irrigation District and Modesto Irrigation District
H–3.
Docket# P–1927, 008, PacifiCorp
H–4.
Docket# P–516, 374, South Carolina Electric & Gas Company

Energy Projects—Certificates

C–1.
Docket# CP01–176, 000, Georgia Strait Crossing Pipeline LP
Other#s CP01–179, 001, Georgia Strait Crossing Pipeline LP
C–2.
Omitted
C–3.
Docket# CP03–74, 000, Dominion Cove Point LNG, LP
C–4.
Docket# CP01–416, 002, Sierra Production Company
C–5.
Docket# CP96–248, 011, Portland Natural Gas Transmission System
C–6.
Docket# CP02–396, 004, Greenbrier Pipeline Company, LLC
Other#s CP02–397, 004, Greenbrier Pipeline Company, LLC
CP02–398, 004, Greenbrier Pipeline Company, LLC
C–7.
Docket# CP03–1, 001, El Paso Natural Gas Company
C–8.
Docket# CP03–11, 001, Jupiter Energy Corporation
C–9.
Docket# CP02–233, 001, Equitrans, L.P., and Carnegie Interstate Pipeline Company

Magalie R. Salas,

Secretary.

[FR Doc. 03–28470 Filed 11–7–03; 4:06 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

November 6, 2003.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: November 13, 2003, 2 P.M.

Place: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

Status: Closed.

Matters to be Considered: Non-Public Investigations and Inquiries and Enforcement Related Matters.

For Further Information Contact: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on November 13, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public reference Room at 888 First Street, NW., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 03–28471 Filed 11–7–03; 4:06 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OA–2003–0007, FRL–7586–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Annual Reporting Form for State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBAP) Under the Clean Air Act as Amended in 1990, EPA ICR Number 1748.03, OMB Control Number 2060–0337

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 12, 2004.

ADDRESSES: Send your comments, referencing docket ID number OA–2003–0007, to EPA online using EDOCKET (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information (OEI) Docket, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Karen V. Brown, Office of Policy, Economics and Innovation, National Center for Environmental Innovation, Office of Business and Community Innovation, Small Business Division, 1808T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–2816; fax number: (202) 566–2848; e-mail address: *brown.karen@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OA–2003–0007, which is available for public viewing at the Office of Environmental Information (OEI) Docket, in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is laced in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are State Small Business Assistance Programs (SBAPs).

Title: Annual Reporting Form for State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBAP) Under the Clean Air Act as Amended in 1990.

Abstract: As part of the Clean Air Act Amendments of 1990, the U.S. Congress included, as part of Section 507, the requirement that each state establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBAP) to assist small businesses in complying with the Act. EPA must provide the Congress with periodic reports from the EPA Small Business Ombudsman (SBO) on these programs, including their effectiveness, difficulties encountered, and other relevant information. Each state assistance program will submit requested information to EPA for compilation and summarization.

This collection of information is mandatory under section 507(a), (d), and (e) of the Clean Air Act as amended in 1990, Pub. L. 101–549, November 15, 1990. This Act directs EPA to monitor the SBTCPs and to provide a report to Congress. This responsibility has been delegated to the EPA SBO. Response to the collection is not required to obtain or retain a benefit. Information in the annual Report to Congress is aggregated and is not of a confidential nature. None of the information collected by this action results in or requests sensitive information of any nature from the states.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 27, 2001, (66 FR16671); no comments were received.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 80 hours per response. The estimated number of respondents is 50 State SBAPs, and 3 Territory SBAPs. The frequency of response is on an annual basis. The estimated total hours of burden is 4,240 hours. There is no annualized capital O&M cost associated with this activity.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 28, 2003.

Karen V. Brown,

Director, Small Business Division, Small Business Ombudsman, Office of Policy, Economics and Innovation, National Center for Environmental Innovation, Office of Business and Community Innovation.

[FR Doc. 03–28423 Filed 11–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7586–1]

Notice of Request for Initial Proposals (IP) for Projects To Be Funded From the Public Water Supply Supervision Program (CFDA 66.424—Surveys, Studies, Demonstrations and Special Purpose Grants—Section 1442 of the Safe Drinking Water Act)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region 6 is soliciting Initial Proposals (IP) from tribes, universities, non-profits, and other entities as defined by the Safe Drinking Water Act (SDWA) interested in applying for Federal assistance for Native American water system operation and management training, and technical assistance (circuit rider) projects to develop, expand, or carry out a program for training persons for methods and occupations involving the public health aspects of providing Safe Drinking Water as authorized by the Safe Drinking Water Act section 1442, 42 U.S.C. 300j-1 on Indian Lands in Louisiana, New Mexico, Oklahoma, and Texas. Region 6 EPA estimates an incremental funding process with as much as $750,000 available per year for three-year cooperative agreements. Multiple awards may be made for various purposes (i.e., regulatory compliance support, operator training and certification, source water assessment and protection), based on specific applicant qualifications. Awards may range from $10,000 to $500,000 based on complexity of project. Awards are expected to be incrementally funded at a similar level each year for the duration of the project period, pending availability of monies allocated to Region 6 for Tribal Direct Implementation of the SDWA including funds from the Underground Injection Control Program, Tribal Drinking Water Operator Training and Certification, and Tribal Public Water System Capacity Development. EPA Region 6 estimates that a total amount of EPA funds for the three-year project period to be as much as $2,250,000, with approximately $350,000 of those funds going toward Tribal Source Water Assessment and Protection, $350,000 going toward Tribal Drinking Water Operator Training and Certification, and the remainder going toward compliance assistance and capacity development activities.

DATES: EPA will consider all proposals received on or before 12 p.m. midnight Central Standard Time December 29, 2003. IPs received after the due date will not be considered for funding.

ADDRESSES: IPs should be mailed to: Yulonda Davis (6WQ–AT), U.S. Environmental Protection Agency, Region 6, Water Quality Protection Division, 1445 Ross Avenue, Dallas, Texas 75202–2733. Overnight Delivery may be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Yulonda Davis, Project Officer, by telephone at 214–665–7154 or by e-mail at *davis.yulonda@epa.gov* or Blake Atkins, Tribal Drinking Water Program Coordinator, by telephone at 214–665–2297 or by e-mail at *atkins.blake@epa.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of This Request for Initial Proposals

EPA Region 6's Water Quality Protection Division is requesting proposals from tribes, universities, non-profits, and other entities as defined by the SDWA for administration of Public Water Supply Supervision (PWSS) program for Tribal Direct Implementation.

EPA Region 6 Has Identified the Following High Priority Areas for Consideration

The purpose of the Native American water system operation, and management training and technical assistance projects are to provide hands-on technical assistance in the operational and managerial aspects of managing drinking water facilities. Project work occurs mainly in the field, using a ''circuit rider'' approach for assisting tribes with drinking water compliance issues and technical issues which may impact drinking water quality.

Other project work includes providing/coordinating local classroom training for tribal operators, tribal utility directors, and other tribal environmental staff, and tribal officials, that range in subject matter through such topics as operator certification exam preparation, disinfection procedures, regulatory requirements, optimization and performance based training.

Additional project work includes support for developing and implementing Tribal Source Water Assessment and Protection programs and activities. Support will be provided to tribal water system staff and tribal environmental staff regarding the EPA Region 6 Source Water Assessment and Protection Programs. Where Source Water Assessments have been completed, support will be provided to interested tribes in completing comprehensive Source Water Protection Programs and activities, following the EPA Region 6 Source Water Protection protocol.

Assistance will be provided predominantly in New Mexico, especially for on-site assistance. Assistance will also be provided, when requested, to tribal water systems in Texas, Oklahoma, and Louisiana, but minimal travel is expected to these locations.

An organization whose IP is selected for Federal assistance must complete an EPA Application for Assistance, including the Federal SF–424 form (Application for Federal Assistance, see 40 CFR 30.12 and 31.10). Organizations who have an existing agreement under this program are eligible to compete for new awards.

Statutory Authority, Applicable Regulations, and Funding Level

Funding is authorized under the provisions of the SDWA section 1442, 42 U.S.C. 300j-1.

The regulations governing the award and administration of Public Water Supply Supervision Cooperative Agreements are in 40 CFR part 30 (for institutions of higher learning, hospitals, and other nonprofit organizations), and 40 CFR part 31 (for States, local governments, and interstate agencies).

Applicants requested to submit a full application will be required to comply with Intergovernmental Review requirements (40 CRF part 29) and the Quality Assurance requirements (40 CFR 30.54 and 31.45) if projects involve environmentally related measurements or data generation.

Total funding available for award by Region 6 is dependent on EPA's appropriation for Fiscal Years 2004, 2005, and 2006. There are estimates of as much as $750,000 per year for three-year cooperative agreements. Awards may range from $10,000 to $500,000. There are no cost share requirements for approved projects.

Proposal Format and Contents

IPs should be no more than three pages with a minimum font size of 10 pitch in Wordperfect/Word or equivalent. Failure to follow the format or to include all requested information could result in the IP not being considered for funding. Full application packages should not be submitted at this time. It is recommended that confidential information not be included in this IP. The following format should be used for all IPs:

Name of Project

Priority Area(s) Addressed (*i.e.*, Operator Certification, Technical Assistance, Source Water Assessment:

Point of Contact: (Individual and Agency/Organization Name, Address, Phone Number, Fax Number, E-mail Address)

Is This a Continuation of a Previously Funded Project (if so, please provide the status of the current grant or cooperative agreement):

Proposed Federal Amount:

Proposed Non-Federal Match (optional, not required):

Proposed Total Award Amount:

Description of General Budget Proposed to Support Project: (Provide budget estimates by task, including travel).

Project Description: (Should not exceed two pages of single-spaced text). Describe organization and relevant experience. Explain organization's interest and goals in entering into a cooperative agreement to perform the project work described in this notice, the availability and training of staff, and available resources to implement the project. Include general description of the proposed project and how it will be organized and implemented. Include a description of how the project will provide continuing education unit (CEU) certifications, and how field work plus classroom training will be delivered. (The majority of the project detail—such as training dates—will be established in participation with EPA in the negotiation of a final workplan, but training events and site visit activity should be generally described.)

Proposed Centers for Implementation/Coordination for Regional/Local Technical Assistance: Home base location of technical assistance providers and project coordination/oversight, such that a regional/local presence and 24-hour/7 days per week emergency assistance can be plausibly implemented.

Expected Accomplishments or Product, with Dates, and Interim Milestones: Define each task and deliverable with a schedule for starting and completing. This section should also include a discussion of a communication plan for distributing the project results to interested parties.

Describe How the Project Meets the Evaluation Criteria Specified Below:

EPA IP Evaluation Criteria

EPA Region 6 will award PWSS cooperative agreements on a competitive basis and evaluate IPs based on the following criteria:

(1) Applicant's demonstrated organizational commitment to providing tribal communities with technical assistance and access to resources, with the objective of increasing tribes' capacity, implementing tribes' own solutions to problems, and providing services in a culturally appropriate manner.

(2) Applicant's specific commitment and experience in the delivery of training and technical/managerial assistance to tribal communities consistent with Safe Drinking Water Act regulation, policy, and Region 6 Guidance.

(3) Applicant's ability to provide assistance with drinking water regulatory compliance monitoring (sampling and analysis), water system optimization, source water assessment and protection, and operator training and certification.

(4) Applicant's ability to maintain continuity of currently provided services to tribal communities without interruption and to work closely with EPA in day-to-day project operation.

(5) Applicant's ability to provide regional/local presence and full technical assistance services in all coverage areas (predominantly New Mexico, Oklahoma, Eastern and Southern Texas, and Northeastern Louisiana).

(6) Applicant's organizational and subject matter expertise resources for the coordination and provision of workshop and classroom training events in drinking water operations and management. Additionally, applicant's ability to provide such training for CEUs where appropriate.

(7) Applicant's ability to produce training literature, training modules, and informational brochures, using both in-house and outside resources in the areas of drinking water, utility management, source water assessment and protection, and systems operations and maintenance.

(8) Applicant's working familiarity with SDWA regulations, with a focus on key monitoring, reporting and public notice requirements of the Total Coliform Rule.

(9) Relationship of the proposed work to the priorities identified in this notice, and how well the proposed work

furthers the objectives of the SDWA in Indian Country.

(10) Applicant's ability to transfer assistance and technologies (computer programs, global positioning systems, pocket PCs, etc.) to tribes, and ability to assist tribes in integrating drinking water activities, especially source water protection, into other environmental programs.

The IPs will be evaluated by regional staff. Each IP will be evaluated against the criteria listed above.

IP Selection

Final selection of IPs will be made by the evaluation team of the Drinking Water Section and State/Tribal Programs Section, EPA Region 6. Selected organizations will be notified in writing and requested to submit full applications. Applications, including workplans, are subject to EPA review and approval.

It is expected that unsuccessful applicants will be notified in writing.

Eligible Applicants

Eligible applicants for assistance agreements under section 1442 of the SDWA are tribes, universities, non-profits, and other entities as defined by the SDWA. IPs received for projects outside of Region 6 will not be considered.

Application Procedure

Please mail three copies of the IP(s).

Dispute Resolution Process

Procedures located in 40 CFR 30.63 and part 31, subpart F.

Type of Assistance

It is expected that all the awards under this program will be cooperative agreements.

A description of the Agency's substantial involvement in cooperative agreements will be included in the final agreement.

Schedule of Activities

This is the estimated schedule of activities for submission, review of proposals and notification of selections: December 29, 2003—Proposals due to EPA. January 12, 2004—Initial proposals selected for funding will be requested to submit a formal application package. January 27, 2004—Application and workplan must be postmarked to EPA.

Deadline extensions, if any, will be posted on the Region 6 Water Quality Protection Division, Assistance Programs Branch web site and not in the **Federal Register** at *http://www.epa.gov/earth1r6/6wq/at/sttribal.htm.* This Web site may also contain additional information about this request.

Dated: November 4, 2003.

Oscar Ramirez,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–28422 Filed 11–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0346; FRL–7333–6]

Aminoethoxyvinylglycine hydrochloride (aviglycine HCl); Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0346, must be received on or before December 15, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0346. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's

policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0346. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0346. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0346.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0346. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 31, 2003.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Valent BioSciences Corporation

PP 6F4632

EPA has received a pesticide petition (6F4632) transferred from Abbott Laboratories and from Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048, proposing pursuant to section 408(d) of the FFDCA,21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing permanent tolerances for residues of the biochemical pesticide aminoethoxyvinylglycine hydrochloride (aviglycine HCl), formerly designated as aminoethoxyvinylglycine (AVG), in or on the food commodities apple and pear at 0.08 part per million (ppm). EPA issued a final rule, published in the **Federal Register** of July 12, 2001 (66 FR 36481) (FRL–6790–7), which announced that it established time-limited tolerances for residues of the plant regulator AVG in or on the food commodities apples and pears at 0.08 ppm, with an expiration date of December 21, 2003. EPA issued a final rule, published in the **Federal Register** of May 7, 1997 (62 FR 24835) (FRL–5713–5), which announced that it established time-limited tolerances for residues of the plant regulator AVG in or on the food commodities apples and pears at 0.08 ppm, with an expiration date of April 1, 2001. A correction to this rule was published in the **Federal Register** of October 29, 1997 (62 FR 56089) (FRL–5751–5), which announced the correction of the reference dose (RfD) appearing on page 24836, column three, third full paragraph, line 11, from ''0.0002,'' to ''0.002.'' Because of a then-existing data gap, all initial tolerances were time-limited. The time limitation was established to provide sufficient time for the development and review of additional data, specifically a rat 2–generation reproduction study. Abbott Laboratories submitted such a study on September 27, 1999. The Agency had also not completed its assessment of new internationally-generated apple residue data (submitted by Valent BioSciences Corporation on May 23, 2000), and of supplementary data received before and after the publication of the July 12, 2001 rule.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Abbott Laboratories submitted a summary of information, data, and arguments in support of their pesticide petition, which was published in the **Federal Register** of February 20, 1997 (62 FR 7778) (FRL– 5589–4). EPA has not republished the summary of information initially submitted by Abbott Laboratories and published in the **Federal Register** of February 20, 1997 except where EPA believes such information would be helpful in understanding the new data. Valent BioSciences Corporation is, however, relying on the previously submitted information in addition to the new data summarized below in support of this pesticide petition to establish permanent tolerances. EPA will take into account all available data when giving due consideration to Valent BioSciences Corporation's petition. Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Valent BioSciences Corporation has submitted the following summary of new information, data, and arguments in support of their pesticide petition. This summary was prepared by Valent BioSciences Corporation and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Aminoethoxyvinylglycine hydrochloride (aviglycine HCl), which was previously designated as aminoethoxyvinylglycine (AVG), is a plant growth regulator used in the harvest management of apples and pears. Applied once a season at 4 weeks prior to the anticipated beginning of the normal harvest period, it is used at the rate of 50 grams active ingredient per acre.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Astudy designed to determine whether uptake, translocation and metabolism of amino-ethoxyvinylglycine hydrochloride occurs in apples identified seven minor metabolites in addition to the primary metabolite, *N*-acetylaminoethoxyvinylglycine. The study was not meant as a measure of the amount of *N*-acetylaminoethoxyvinylglycine hydrochloride residues and metabolites found in apples under normal field conditions. The only significant incorporation of aminoethoxyvinylglycine hydrochloride in apple tissues, following brush-on application at high rates, resulted from absorption from the peel rather than translocation from the leaves. Aminoethoxyvinylglycine hydrochloride is also metabolized in the tissues to form *N*-acetylaminoethoxyvinylglycine and several other minor metabolites, and is partially degraded on the apple surface

to water-soluble products that may be formed due to microbial and/or photodegradative action.

2. *Magnitude of residue at the time of harvest and method used to determine the residue*. Crops in residue trials were treated at maximum label rates and harvested at the specified minimum treatment to harvest intervals. Residue data previously submitted by Abbott Laboratories and reviewed by EPA indicated that at the proposed use rates, no quantifiable residues were present in or on the food commodities at 21 days after treatment. Additional residue data generated internationally has been provided to EPA by Valent BioSciences Corporation. There is a practical method for detecting and measuring levels of aviglycine HCl in or on food with a limit of detection (LOD) that allows monitoring of food with residues at or above the levels set in these proposed tolerances. Abbott Laboratories has submitted a practical analytical methodology for detecting and measuring levels of aviglycine HCl in or on raw agricultural commodities (RACs). The proposed analytical method for determining residues is by high-performance liquid chromatography (HPLC). The HPLC/fluorescence detector analytical method used in the residue studies has been validated by an independent laboratory and provided to FDA. The limit of quantitation (LOQ) was 0.075 µg/kg.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed. Analytical Enforcement Methodology*. Adequate enforcement methodology high performance liquid chromotography (HPLC)/fluorescence detector) is available to enforce the tolerance expression. The method may be requested from: Christine Olinger, Acting Chief of the Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Fort Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

C. Mammalian Toxicological Profile

1. *Acute toxicity*. Aviglycine HCl has low acute oral, dermal, and inhalation toxicity. The oral lethal dose $(LD)_{50}$ in rats is >5,000 milligrams/kilogram (mg/kg), the dermal LD_{50} is >2,000 mg/kg and the inhalation 4–hour lethal concentration $(LC)_{50}$ is >5.00 milligrams/Liter (mg/L) air. Aviglycine HCl is not a skin sensitizer in guinea pigs, and is not irritating to the skin and eyes of rabbits. End-use formulations of aviglycine HCl have similar low acute toxicity profiles.

2. *Genotoxicity*. Aviglycine HCl does not induce gene mutations in bacterial and mammalian cells, chromosome aberrations in mammalian cells or deoxyribonucleic acid (DNA) damage in bacterial cells in *in vitro* test systems. Similarly, it does not exhibit a clastogenic effect *in vivo* in the rat micronucleus test. Therefore, there is no evidence to suggest a genotoxic hazard at any of the three main levels of genetic organization.

3. *Reproductive and developmental toxicity*. In the rabbit developmental toxicity study with aviglycine HCl, there was no evidence of teratogenicity or other embryotoxic effects at the highest dose levels tested, although maternal toxicity was evident. The rabbit maternal no observed adverse effect level (NOAEL) was established at 0.4 mg a.i./kg body weight/day (mg a.i./kg bwt/day) based on reduced body weight gains and food consumption, and decreased defecation. The developmental NOAEL was established at 0.4 mg a.i./kg bwt/day based on fetal body weights. In the rat test the maternal NOAEL was established at 1.77 mg a.i./kg bwt/day based on inhibition of body weight gain and reduced food consumption. The developmental NOAEL was found to be 1.77 mg a.i./kg bwt/day based on decreased mean fetal body weights and reduced ossification at a higher dose level. The developmental and maternal lowest observed adverse effect levels (LOAELs) were established at 8.06 mg a.i./kg bwt/day. Aviglycine HCl was evaluated in a rat 2–generation reproduction study submitted by Abbott Laboratories. Based on reductions in body weight, changes in organ weights and an increased incidence of microscopic findings at the 2.5 mg a.i./kg bwt/day dose, the parental NOAEL was established at 0.8 mg a.i./kg bwt/day. The NOAEL for reproductive toxicity was established at 4.0 mg a.i./kg bwt/day and the neonatal toxicity NOAEL was established at 2.5 mg a.i./kg bwt/day.

4. *Subchronic toxicity*. Subchronic 90–day feeding studies were conducted with rats, mice, and dogs. In a 90–day feeding study in rats, the NOAEL was 0.4 mg a.i./kg bwt/day for males and females based on increased incidence of periportal hepatocellular vacuolation in the liver. In the 90–day feeding study in mice, the NOAEL was established at 10 mg a.i./kg bwt/day for males and females - based on decreased body weight and histopathological changes in the liver (both sexes), in the testis (males) and the adrenal (females) at 25 mg a.i./kg bwt/day. For dogs, the NOAEL was established at 0.6 mg a.i./kg bwt/day - based on inappetence, low body weight gain and centrilobular histopathological changes in the liver at 1.2 mg a.i./kg bwt/day. Note that the liver vaculation is considered an adaptive change. Increased vaculation of the liver was not observed in the 52–week chronic rat study or the 104–week rat oncogenicity study. A 21–day repeat dose dermal toxicity study in rats was carried out at 0, 100, 500, and 1,000 mg a.i./kg bwt/day. The NOAEL is 1,000 mg a.i./kg bwt/day; a LOAEL was not determined.

5. *Chronic toxicity*. Chronic studies with aviglycine HCl were conducted on rats to determine oncogenic potential and/or chronic toxicity of the compound. The NOAEL for the 1–year chronic study was 0.7 mg a.i./kg bwt/day for males and females based on decreases in body weights, food consumption, testicular tubular, epithelial vacuolation, and pancreatic acinar cell atrophy. The rat carcinogenicity study with aviglycine HCl confirmed the substance has no carcinogenic potential. There was no evidence of cell necrosis that could be a preliminary stage to active ingredient tumor genesis, and time of death was similar to controls. During the 2–year carcinogenicity study, the administration of aviglycine HCl at 7 mg a.i./kg bwt/day was associated with body weight and food consumption reductions, increases in the incidence of adrenal focal medullary cell hyperplasia, testicular tubular atrophy, and other associated findings in the testis and epididymis, ocular cataracts, and pancreatic lobular/acinar cell atrophy. The NOAEL was established at 0.7 mg a.i./kg bwt/day.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Expected dietary exposures from residues of aviglycine HCl would occur through apples, pears, and processed apples and pears. Chronic dietary exposure assessments were conducted using a Tier I approach. This Tier I assessment incorporated tolerance level residues and 100% crop-treated in the estimated dietary intake trends. The resulting exposures were compared to a RfD of 0.007 mg a.i./kg bwt/day, which was based on the NOAEL of 0.7 mg a.i./kg bwt/day from the 104–week rat study and a 100–fold uncertainty factor (UF). Chronic dietary exposure estimates for the overall U.S. population and 25 population subgroups are well below the chronic RfD. There are no acute toxicity concerns with aviglycine HCl as there is no toxicological endpoint attributable to a single exposure in the aviglycine HCl toxicology data base,

including the rat and rabbit developmental studies. Therefore, only chronic dietary exposures have been assessed.

ii. *Drinking water.* Aviglycine HCl is highly unlikely to contaminate ground water resources due to its high soil sorption, and short soil and water/sediment half-lives. Study results show that aviglycine HCl is easily adsorbed to soils, principally onto clay particles. Half-lives in soils vary between 1.7 and 4.7 days. Water-sediment studies have shown that aviglycine HCl will be readily adsorbed to sediment where it is mineralized and incorporated into the organic fraction of the sediment. Biodegradation occurs in both systems. The half-life of aviglycine HCl in the aqueous phase and total water/sediment system was calculated to be 1.5 and 4.3 days respectively.

2. *Non-dietary exposure.* Aviglycine HCl has no product registrations for residential non-food uses. Non-occupational, non-dietary exposure for aviglycine HCl has thus been estimated to be extremely small. Therefore, the potential for non-dietary exposure is insignificant. The exposure from the commercial use is expected to be dermal in nature. A 21–day repeat dose dermal toxicity study resulted in no significant treatment related effects at 1,000 mg a.i./kg bwt/day, the highest dose tested (HDT).

E. Cumulative Exposure

Consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of aviglycine HCl would be cumulative with those of any other chemical compounds. Aviglycine HCl has a novel mode of action compared to other currently registered active ingredients. Therefore, Valent BioSciences Corporation believes it is appropriate to consider only the potential risks of aviglycine HCl in an aggregate risk assessment.

F. Safety Determination

1. *U.S. population.* Aviglycine HCl is an alpha amino acid which has been generated through a fermentation of a soil microorganism. Using the chronic exposure assumptions and the proposed RfD described above, the dietary exposure to aviglycine HCl for the U.S. population was calculated to be 0.98% of the RfD. Therefore, taking into account the proposed uses, it can be concluded with reasonable certainty that residues of aviglycine HCl in food and drinking water will not result in unacceptable levels of human health risk.

2. *Infants and children.* FFDCA section 408 (b)(2)(C)(i) provides that EPA shall apply an additional safety factor for infants and children to account for prenatal and postnatal toxicity and the lack of completeness of the data base. Only when there is no indication of increased sensitivity of infants and children and when the data base is complete, may the extra safety factor be removed. In the case of aviglycine HCl, the toxicology data base is complete. There is no indication of increased sensitivity in the data base overall, and specifically, there is no indication of increased sensitivity in the developmental and multi-generation reproductive toxicity studies. Therefore, Valent BioSciences Corporation concludes that there is no need for an additional safety factor and a safety factor of 100 be used for the assessment. Using the chronic exposure assumptions and the proposed RfD described above, the dietary exposure to aviglycine HCl for non-nursing infants was calculated to be 10.3% of the RfD. The proposed tolerances will utilize 0.98% of the RfD for the U.S. population.

G. Effects on the Immune and Endocrine Systems

Lifespan, and multigenerational studies on mammals, and acute and subchronic studies on aquatic organisms and wildlife did not reveal any definite immune or endocrine effects. An immunotoxicity study in rats at 0, 1.25, 5, and 15 mg a.i./kg bwt/day presented a NOAEL of 5 mg a.i./kg bwt/day based on decreased primary antibody (igM) response to sheep red blood cells, decreased absolute and relative thymus weights, and decreased body weight, food consumption and food efficiency at the high dose level. The LOAEL is 15 mg a.i./kg bwt/day. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of aviglycine HCl is considered negligible.

H. Existing Tolerances

Time limited tolerances have been established for the residues of aminoethoxyvinylglycine hydrochloride (aviglycine HCl, formerly aminoethoxyvinylglycine (AVG)) in or on the following food commodities:

Commodity	Parts per million	Expiration date
Apple	0.08	December 21, 2003
Pear	0.08	December 21, 2003

Temporary tolerances have been established for the residues of aminoethoxyvinylglycine hydrochloride (aviglycine HCl, formerly aminoethoxyvinylglycine (AVG)) in or on the following food commodities:

Commodity	Parts per million	Expiration date
Fruit, stone, group	0.170	December 21, 2003

I. International Tolerances

There are no codex maximum residue limits for use of aminoethoxyvinylglycine hydrochloride on apples or pears, or on any other crop.

[FR Doc. 03–28425 Filed 11–12–03; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

November 4, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 12, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–7232, or via fax at 202–395–5167 or via Internet at *Kim_A._Johnson@omb.eop.gov,* and Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at (202) 418–0214 or via Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB processing review of this new information collection with an OMB approval by November 14, 2003.*

OMB Control Number: 3060–XXXX.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Report and Order and Second Order on Reconsideration.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,023 respondents; 7,140 responses.

Estimated Time Per Response: 100 hours.

Frequency of Response: Quarterly reporting requirement and third party disclosure requirement.

Total Annual Burden: 1,323,600 hours.

Total Annual Cost: N/A.

Needs and Uses: In CC Docket No. 96–128, the Commission promulgated rules and requirements under Section 276 of the Act that every payphone service provider be fairly compensated for every completed payphone call made from one of their payphones. The rules require: (1) Each Switch-Based Reseller (SBR) to establish and maintain an accurate tracking system, and have that system audited for accuracy by a third party auditor; (2) require SBR's to provide quarterly reports to each PSP containing compensation with supporting data; and (3) require each facilities-based long distance carrier (Intermediate Carrier) that switches payphone calls to other facilities-based long distance carriers to provide each PSP with quarterly reports that include a list of all the facilities-based long distance carriers to which the Intermediate Carrier switched toll-free and access code calls dialed from each of that payphone service provider's payphones.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–28378 Filed 11–12–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010977–053.

Title: Hispaniola Discussion Agreement.

Parties: Crowley Liner Services, Inc.; Seaboard Marine Ltd.; Tropical Shipping and Construction Co., Ltd.; and Frontier Liner Services, Inc.

Synopsis: The amendment removes Bernuth Agencies, Inc. as a party to the agreement.

Agreement No.: 011375–061.

Title: Trans-Atlantic Conference Agreement.

Parties: Atlantic Container Line AB; A.P. Moller-Maersk A/S; Hapag-Lloyd Container Linie GmbH; Mediterranean Shipping Company, S.A.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and P&O Nedlloyd Limited.

Synopsis: The amendment deletes Russia from the geographic scope of the agreement and updates Maersk's corporate name.

Agreement No.: 011823–004.

Title: Contship/P&O Nedlloyd Vessel Sharing Agreement.

Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V., and Contship Containerlines.

Synopsis: The amendment revises the withdrawal provisions of the agreement.

Agreement No.: 011852–002.

Title: Maritime Security Discussion Agreement.

Parties: American President Lines, Ltd.; APL Co. PTE Ltd.; CMA–CGM (America) Inc.; COSCO Container Lines Company, Ltd.; Evergreen Marine Corporation; Hanjin Shipping Company, Ltd.; Hapag Lloyd Container Linie GmbH; Kawasaki Kisen Kaisha Ltd.; A.P. Moller Maersk Sealand; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Yang Ming Transport Corp.; Zim Israel Navigation Co., Ltd.; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Eagle Marine Services Ltd.; Global Terminal & Container Services, Inc.; Howland Hook Container Terminal, Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Long Beach Container Terminal, Inc.; Maersk Pacific Ltd.; Maher Terminals, Inc.; Marine Terminals Corp.; Maryland Port Administration; Massachusetts Port Authority; Metropolitan Stevedore Co.; P&O Ports North American, Inc.; Port of Tacoma; South Carolina State Ports Authority; Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc.; TraPac Terminals; Universal Maritime Service Corp.; and Virginia International Terminals.

Synopsis: The amendment adds CMA CGM and Massachusetts Port Authority as parties to the agreement.

Agreement No.: 201150.

Title: New Orleans/P&O Ports LA Napoleon Terminal Lease.

Parties: Board of Commissioners of the Port of New Orleans; P&O Ports Louisiana, Inc.

Synopsis: The agreement provides for the lease of certain properties at the Napoleon Avenue Terminal Complex. The agreement's initial term expires November 5, 2008.

Dated: November 7, 2003.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–28444 Filed 11–12–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Monarch Logistics LLC., 41 Los Altos Road, Orinda, CA 94563–1701. Officer: William C. Hughes, CEO, (Qualifying Individual).

Fargo Group Inc., 1611 W. Rosecrans Avenue, Gardena, CA 90249. Officers: Donna Liyun Lee, Vice President, (Qualifying Individual), Ann S. Yan, Vice President.

A.O.T. Gulf Ltd., 15402 Vantage Parkway E., Suite 314, Houston, TX 77032. Officer: Nikki Almond, Branch Manager, (Qualifying Individual).

Starbridge U.S.A. Corporation dba Worldwide Shipping Agency, 1121 S. Military Trail, #363, Deerfield Beach, FL 33442. Officer: Charlotte Pejcinovic, President, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Global Cargo Alliance, Corp., 1861 NW 97th Avenue, Miami, FL 33172. Officers: Samira Marino, General Director, (Qualifying Individual), Jamil Atallah, President.

Dated: November 7, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–28445 Filed 11–12–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Alabama National BanCorporation, Birmingham, Alabama; to merge with Cypress Bankshares, Inc., Palm Coast, Florida, and thereby indirectly acquire Cypress Bank, Palm Coast, Florida.

2. Sterling Bancgroup, Inc., Lantana, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Sterling Bank, Lantana, Florida.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Hillsboro Bancshares, Inc., Hillsboro, Texas, and Hillsboro Holdings, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of The Citizens National Bank of Hillsboro, Hillsboro, Texas.

Board of Governors of the Federal Reserve System, November 6, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–28453 Filed 11–12–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: November 5, 2003, 9 a.m.–2:45 p.m.; November 6, 2003, 10 p.m.–3:00 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 505A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the full Committee will hear updates and status reports from the Department on several topics including HHS Data Council activities, the adoption of data standards including clinical data standards, and privacy rule compliance. A presentation on summary health measures is also planned with subsequent discussion. In the afternoon there will be a discussion of recommendations, reports and letters that the Committee is working on in selected areas including patient medical record information standards, the Consolidated Healthcare Informatics Initiative, ICD–10 CM, and activities directly relating to the Health Insurance Portability and Accountability Act of 1996 (HIPAA.) The Committee also plans to hear about activities of the Subcommittee on Populations during this session. On the second day the Committee will discuss its quality report and hear a presentation on the planned National Children's Study. There will also be reports from the Subcommittees and discussion of agendas for future NCVHS meetings.

The time shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www/ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: October 27, 2003.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–28434 Filed 11–12–03; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Time and Date: 9 a.m.–5 p.m. November 19, 2003; 8:30 a.m.–12:30 p.m. November 20, 2003.

Place: Silver Spring Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

Status: Open.

Background: The National Committee on Vital and Health Statistics is the statutory public advisory body to the Secretary of Health and Human Services in the area of health data, statistics, and health information policy. Established by section 306(k) of the Public Health Service Act (42 U.S.C. 242K(k)), its mandate includes advising the Secretary on the implementation of the Administrative Simplification provisions (Social Security Act, title XI, part C, 42 U.S.C. section 1320d to 1320d–8) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191.

The NCVHS Subcommittee on Privacy and Confidentiality monitors developments in health information privacy and confidentiality on behalf of the full Committee and makes recommendations to the full Committee so that it can advise the Secretary on implementation of the health information privacy provisions of HIPAA.

Purpose: This meeting of the Subcommittee on Privacy and Confidentiality will receive information on the implementation of the regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164), promulgated under the Health Insurance Portability and Accountability Act of 1996.

The regulation and further information about it can be found on the Web site of the Office for Civil Rights, at *http://www.hhs.gov/ocr/hipaa/.* The regulation has been in effect since April 14, 2001. Most entities covered by the regulation were required to come into compliance by April 14, 2003.

The first day of the meeting will be conducted as a hearing, in which the Subcommittee will gather information about the impact of the regulation on public health reporting and on health care providers, health plans and consumers. The Subcommittee will invite representatives of affected groups to provide information about how the regulation has affected the level of privacy and confidentiality for protected health information, best practices for implementation of the regulation, and information that might help to identify and resolve barriers to compliance. The format will include one or more invited panels and time for questions and discussion. The Subcommittee will ask the invited witnesses for examples of the effect the regulation has had on individuals and on entities subject to the regulation. The first day will also include a time period during which members of the public may deliver brief (3 minutes or less) oral public comment about the implementation of the regulation. To be included on the agenda, please contact Marietta Squire (301) 458–4524, by e-mail at *mrawlinson@cdc.gov* or postal address at 3311 Toledo Road, Room 2340, Hyattsville, MD 20782 by November 12, 2003.

The second day of the meeting will be conducted in two parts. The first part will be a hearing in which the Subcommittee will gather information about the effects of the regulation on organizations involved in health research activities. The Subcommittee will invite representatives of affected groups to provide information about how the regulation has affected the level of privacy and confidentiality for protected health information, best practices for implementation of the regulation, and information that might help to identify and resolve barriers to compliance. The second part will consist of Subcommittee discussion of the testimony it has heard and deliberations about possible recommendations to the Secretary.

Persons wishing to submit written testimony only (which should not exceed five double-spaced typewritten pages) should endeavor to submit it by that date. Unfilled slots for oral testimony will also be filled on the days of the meeting as time permits. Please consult Ms. Squire for further information about these arrangements.

Additional information about the hearing will be provided on the NCVHS Web site at *http://www.ncvhs.hhs.gov* shortly before the hearing date.

FOR FURTHER INFORMATION CONTACT: Information about the content of the hearing and matters to be considered may be obtained from Kathleen H. Fyffe, Lead Staff Person for the NCVHS Subcommittee on Privacy and Confidentiality, Office of the Assistant Secretary for planning and Evaluation, U.S. Department of Health and Human Services, 440D Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201, telephone (202) 690–7152, e-mail *Kathleen.Fyfee@hhs.gov* or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 2413, Presidential Building IV, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4245.

Information about the committee, including summaries of past meetings and a roster of committee members, is available on the Committee's Web site at *http:www.ncvhc.hhs.gov.*

Dated: October 27, 2003.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, OASPE.

[FR Doc. 03–28436 Filed 11–12–03; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Delegation of Authority

Notice is hereby given that I have delegated to the Commissioner of Food and Drugs the authority, vested in the Secretary of the Department of Health and Human Services, under section 353 of the Public Health Service Act (42 U.S.C. 263a), as amended, to implement CLIA's complexity categorization provisions, which includes, but is not limited to the following:

(a) Interpreting the CLIA provisions related to complexity categorization;

(b) Holding public workshops and meetings on CLIA complexity categorization; and,

(c) Developing and issuing implementing rules and guidance for CLIA complexity categorization.

The existing delegation of authority to the Administrator, Centers for Medicare & Medicaid, concerning CLIA is unaffected.

This delegation is effective upon date of signature. In addition, I ratify and affirm any actions taken by the Commissioner of Food and Drugs or his subordinates which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: October 31, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–28435 Filed 11–12–03; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI)

and the Assistant Secretary for Health have taken final action in the following case:

Timothy R. Smith, Ph.D., Michigan State University: Based on the findings of Michigan State University, the respondent's admission, and analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Timothy R. Smith, Ph.D., former Postdoctoral Fellow, Department of Biochemistry and Molecular Biology at Michigan State University, engaged in scientific misconduct in research supported by National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH) grant P01 GM57323, entitled ''Oxygen utilizing membrane heme proteins.''

Specifically, PHS found that Dr. Smith falsified and fabricated data involving research into the physical interaction of prostaglandin endoperoxide synthase-2 (PGHS–2) with cell membranes, and the effects of arachidonate and nonsteroidal anti-inflammatory drugs (NSAIDs) on PGHS–2 structure.

Dr. Smith committed scientific misconduct by falsifying and fabricating data for the following tables and figures in his 2000 doctoral dissertation and in a paper in the *Journal of Biological Chemistry* (275:40407–40415, 2000) entitled ''Arachidonic Acid and Nonsteroidal Anti-inflammatory Drugs Induce Conformational Changes in the Human Prostaglandin Endoperoxide H_2 Synthase-2 (Cyclooxygenase-2)'' (*JBC* paper):

I. *JBC* paper Table II, entitled ''Comparison of inter-residue distances as determined by EPR spectroscopy and as calculated from the x-ray crystal structures'' (and corresponding Dissertation Table 6 entitled ''EPR determined and X-ray crystal modeled inter-nitroxide distances of PGHS–2 MBD mutants'');

II. *JBC* paper Table III entitled ''Changes in inter-nitroxide differences between PGHS–2 holoenzyme and the apoenzyme, and the arachidonate, flurbiprofen, and SC58125 complexes'' (and corresponding Dissertation Table 7), entitled ''Relative changes in inter-nitroxide distances for NSAID and arachidonate complexes compared to the unliganded enzyme'');

III. *JBC* paper Figure 4 (binding curves) (and corresponding Dissertation Figure 20 entitled ''Binding curves for the association of heme, flurbiprofen and arachidonic acid with PGHS–2 double mutants'');

IV. Dissertation Table 8 entitled ''EPR determined inter-nitroxide distances for NSAID and arachidonate complexes of PGHS–2 MBD mutants;'

V. Dissertation Table 9 entitled ''Relative changes in inter-nitroxide distances for NSAID and arachidonate complexes compared to the unliganded enzyme;'

VI. Dissertation Table 10 entitled ''Kinetic properties and NSAID sensitivities of PGHS–2 active site mutants;''

VII. Dissertation Table 12 entitled ''Relative PGHS–2 protein incorporation of PGHS–2 into lipsomes of varying composition;''

IX. Dissertation Table 13 entitled ''EPR determined inter-nitroxide distances for detergent solubilized and lipsome reconstituted PGHS–2 mutants;'' and

X. Dissertation Figure 27 entitled ''Lipid and activity profile of sucrose gradient fractions.''

The research misconduct was significant for several reasons. First, the *JBC* paper was novel in that it reported that binding of arachidonate and NSAIDs induced structural changes in PHS–2. For the naturally occurring fatty acid arachidonate, this had not previously been shown. These results could be interpreted as having important implications for understanding the catalytic mechanism of this enzyme. In addition, a considerable expenditure of other researchers' time and resources was prompted by using results generated from the falsified and fabricated data in the *JBC* paper.

Dr. Smith has entered into a Voluntary Exclusion Agreement (Agreement) in which he has voluntarily agreed:

(1) to exclude himself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on October 27, 2003;

(2) to exclude himself voluntarily from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government defined as ''covered transactions'' in the debarment regulations at 45 CFR part 76 for a period of three (3) years, beginning on October 27, 2003. During the three (3) year period of voluntary exclusion, PHS grant funds may be used to pay for page charges for any written work currently being prepared for submission and/or publication on which Dr. Smith is listed as an author only if (i) such written work is unrelated to the misconduct findings described in the Agreement, (ii) Dr. Smith is not listed as first author, and (iii) the publication does not state that Dr. Smith was supported by a PHS grant. Dr. Smith must certify that all data supporting such written work is true and accurate to the best of his knowledge; and

(3) to submit a letter within 30 days of notification of this action to *JBC* requesting retraction of the following paper: Smith, T., McCracken, J., Shin, Y.K., & DeWitt, D. ''Arachidonic Acid and Nonsteroidal Anti-inflammatory Drugs Induce Conformational Changes in the Human Prostaglandin Endoperoxide H_2 Synthase-2 (Cyclooxygenase-3).'' *J. Biol. Chem.* 275:40407–40415, 2000. Dr. Smith agreed that the retraction will state that he alone was responsible for the falsification and fabrication of the results and will specifically list the falsified figures delineated on page 1 of the Agreement (Findings I, II, and III). Dr. Smith must submit a draft of the retraction letter for ORI approval prior to sending it to *JBC.* This requirement for retraction will be noted on the ALERT System until Dr. Smith sends a copy of the retraction letter to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 03–28377 Filed 11–12–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Head Start Survey Under Emergency Review by the Office of Management and Budget (OMB)

Title: Survey of Salaries and Other Compensation of Head Start Grantees and Delegate Agencies Nationwide.

OMB No. New request.

Description: A committee of the U.S. House of Representatives requested that the Secretary of Health and Human Services conduct a review of the financial management of Head Start grantees nationwide. The House Education and the Workforce Committee is interested in knowing the salaries and benefits of the top 25 Head Start executives and the amount of their salary and benefits financed using Federal Head Start dollars. To be responsive to the House of

Representatives, the Head Start Bureau has prepared a survey form to be mailed to and completed by all Head Start grantees and delegate agencies within 30 days. The Head Start Bureau will then compile the results and forward the requested information to the Committee.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Completion of HSB Survey (new web-based form)	2700	1x only	.5	1,350
Retrieval and submission of existing IRS Form 990, SF424, and PIR data	2700	1x only	8.5	22,950

Estimated Total Burden Hours: 24,300 hours.

Additional Information: The Administration for Children and Families is requesting that OMB grant a 30-day approval for this information collection under procedures for emergency processing by December 8, 2003. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275. In addition, a request may be made by sending an e-mail request to: *rsargis@acf.hhs.gov.*

Comments and suggestions about the information collection described above should be directed to the following e-mail address at the Office of Information and Regulatory Affairs, Office of Management and Budget, Paper Reduction Project: *Lauren_Wittenberg@omb.eop.gov.*

Dated: November 6, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–28437 Filed 11–12–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001B–0431]

International Conference on Harmonisation; Final Recommendations on the Revision of the Permitted Daily Exposures for Two Solvents, N-Methylpyrrolidone and Tetrahydrofuran, According to the Maintenance Procedures for the Guidance Q3C Impurities: Residual Solvents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing final recommendations to revise the permitted daily exposures (PDEs) for two solvents, n-methylpyrrolidone (NMP) and tetrahydrofuran (THF), according to the maintenance procedures for the guidance for industry entitled ''Q3C Impurities: Residual Solvents.'' The final recommendations were reached under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH).

DATES: Submit written or electronic comments on guidance documents at any time.

ADDRESSES: Submit written comments on the analyses and recommendations to revise the PDEs for NMP and THF to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Submit written requests for single copies of the documents to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research , 1401 Rockville Pike, Rockville, MD 20852–1448, FAX 888–223–7329. Send two self-addressed adhesive labels to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to documents and maintenance procedures.

FOR FURTHER INFORMATION CONTACT:

Regarding the Q3C guidance: Robert Osterberg, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2120; or Andrew Shrake, Center for Biologics Evaluation and Research (HFM–345), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1148, 301–402–4635.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonisation of regulatory requirements. FDA has participated in many meetings designed to enhance harmonisation and is committed to seeking scientifically based, harmonized technical procedures for pharmaceutical development. One of the goals of harmonisation is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonisation initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonisation of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of December 24, 1997 (62 FR 67377), FDA published the ICH draft guidance for industry entitled ''Q3C Impurities: Residual Solvents.'' The draft guidance makes recommendations as to what amounts of residual solvents are considered safe in pharmaceuticals. The draft guidance recommends use of less toxic solvents and describes levels considered to be toxicologically acceptable for some residual solvents. Upon issuance in 1997, the text and appendix 1 of the draft guidance contained several tables and a list of solvents categorizing residual solvents by toxicity, classes 1 through 3, with class 1 being the most toxic. The ICH Quality Expert Working Group (EWG) agreed that the PDE could be modified if reliable and more relevant toxicity data were brought to the attention of the group and the modified PDE could result in a revision of the tables and list.

In 1999, ICH instituted a Q3C maintenance agreement and formed a maintenance EWG (Q3C EWG). The agreement provided for the reconsideration of solvent PDEs and allowed for minor changes to the tables and list that include the existing PDEs. The agreement also provided that new solvents and PDEs could be added to the tables and list based on adequate toxicity data. In the **Federal Register** of February 12, 2002 (67 FR 6542), FDA briefly described the process for proposing future revisions to the PDEs. In the same notice, the agency announced its decision to delink the tables and list from the Q3C guidance and create a stand alone document entitled ''Q3C: Tables and List'' to facilitate making changes recommended by ICH.

In the **Federal Register** of February 12, 2002 (67 FR 6542), FDA also announced the availability of draft recommendations for the revision of the PDE for NMP and THF according to the Q3C maintenance procedures. The notice gave interested persons an opportunity to submit comments by March 14, 2002.

II. Revised PDEs for NMP and THF

After consideration of the comments received, the EWG's recommendations to revise the PDEs for NMP and THF were submitted to the ICH Steering Committee and agreement was reached by the three participating regulatory agencies in September 2002.

A. N-Methylpyrrolidone (NMP)

The Q3C EWG received new toxicity data for the solvent NMP in late 1999. In February 2002, FDA made available for comment the EWG's draft recommendation for the revision of the PDE for NMP (67 FR 6542 at 6543). At the September 2002 ICH meeting, the Steering Committee agreed to the EWG's recommendation to keep NMP in Class 2. A PDE of 5.3 milligrams per day (mg/day) and a concentration limit of 530 parts per million (ppm) are being declared for this solvent.

B. Tetrahydrofuran (THF)

The Q3C EWG reviewed new toxicity data for the solvent THF. In February 2002, FDA made available for comment the EWG's draft recommendation for the revision of the PDE for THF (67 FR 6542 at 6543). At the September 2002 ICH meeting, the Steering Committee agreed to the EWG's recommendation to move THF from class 3 to class 2. A PDE of 7.2 mg/day and a concentration limit of 720 ppm are being declared for this solvent.

The analyses and recommendations for NMP and THF are available for review at *http://www.fda.gov/cder/audiences/iact/iachome.htm*. They are also available from the Division of Drug Information (HFD–240) (see **ADDRESSES**). The agency will revise the tables and list in the guidance ''Q3C: Tables and List'' to reflect the ICH final recommendations for NMP and THF.

The revised PDEs for the two solvents contained in the revised guidance ''Q3C: Tables and List'' represent the agency's current thinking on this topic. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the list and on guidance documents at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The analyses and recommendations and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Internet Access to Documents and the Maintenance Procedures

Persons with access to the Internet may obtain the Q3C documents at *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/guidelines.htm*. Information on the Q3C maintenance process, and proposals, recommendations, and agreements for revisions to the tables and list are made available at *http://www.fda.gov/cder/audiences/iact/iachome.htm*. The electronic address for the Division of Dockets Management is *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: November 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28372 Filed 11–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0368]

International Cooperation on Harmonisation of Technical Requirements for Approval of Veterinary Medicinal Products; Guidance for Industry on ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (90-Day) Toxicity Testing'' (VICH GL31); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (#147) entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (90-Day) Toxicity Testing'' (VICH GL31). This guidance has been developed by the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The objective of this guidance is to establish recommendations for an internationally harmonized 90-day repeat-dose testing.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments are to be identified with the

docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Louis T. Mulligan, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6984, e-mail: *lmulliga@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonization of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Guidance on Toxicity Testing

In the **Federal Register** of September 4, 2002 (67 FR 56569), FDA published the notice of availability of the VICH draft guidance, giving interested persons until October 4, 2002 to submit comments. After consideration of comments received, the draft guidance was changed in response to the comments and submitted to the VICH Steering Committee. At a meeting held from October 10 to 11, 2002, the VICH Steering Committee endorsed the guidance for industry, VICH GL31.

A variety of toxicological evaluations are performed to establish the safety of veterinary drug residues in human food. The objective of this guidance is to establish recommendations for an internationally harmonized 90-day repeat-dose testing.

III. Significance of Guidance

This document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' Because guidance documents are not binding unless specifically supported by statute or regulation, mandatory words such as ''must,'' ''shall,'' and ''will'' in the original VICH documents have been substituted with ''should'' or ''it is recommended.''

This guidance document represents the agency's current thinking on establishing the safety of veterinary drug residues in human food. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

As with all of FDA's guidances, the public is encouraged to submit written or electronic comments pertinent to this guidance. FDA will periodically review the comments in the docket and where appropriate, will amend the guidance. The agency will notify the public of any such amendments through a notice in the **Federal Register**.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this guidance document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance document and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with Internet access may obtain copies of the guidance document entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (90-Day) Toxicity Testing'' (VICH GL31), from the CVM home page at *http://www.fda.gov/cvm*.

Dated: October 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28371 Filed 11–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0474]

International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products; Draft Guidance for Industry on ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Establish a Microbiological Acceptable Daily Intake;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comments of a draft guidance document for industry (#159) entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Establish a Microbiological ADI'' (VICH GL–36). This draft guidance has been developed for veterinary use by the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH).

This draft VICH guidance document provides guidance for assessing the human food safety of residues from veterinary antimicrobial drugs with regard to effects on the human intestinal flora.

DATES: Submit written or electronic comments on the draft guidance by December 15, 2003 to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Louis T. Mulligan, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6984, e-mail: *lmulliga@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonization of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH steering committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, the United States' FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH steering committee: One representative from the Government of Australia/New Zealand, one representative from the industry in Australia/ New Zealand, one representative from the Government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH steering committee meetings.

II. Draft Guidance on Microbiological Acceptable Daily Intake (ADI)

The VICH steering committee held a meeting on May 8, 2003, and agreed that the draft guidance document entitled ''Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Establish a Microbiological ADI'' (VICH GL–36) should be made available for public comment. This draft VICH guidance provides guidance for assessing the human food safety of residues from veterinary antimicrobial drugs with regard to effects on the human intestinal flora. The objectives of this guidance are as follows: (1) To outline the recommended steps in determining the need for establishing a microbiological ADI; (2) to recommend test systems and methods for determining no-observable adverse effect concentrations (NOAECs) and no-observable adverse effect levels (NOAELs) for the endpoints of health concern; and (3) to recommend a procedure to derive a microbiological ADI. It is recognized that different tests may be useful. The experience gained with the recommended tests may result in future modifications to this guidance and its recommendations.

FDA and the VICH Safety Working Group will consider comments about the draft guidance document. Information collection is covered under Office of Management and Budget (OMB) control number 0910–0032.

III. Significance of Guidance

This draft document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115).

The draft VICH guidance (#159) is consistent with the agency's current thinking on the general approach to establish a microbiological ADI. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit written or electronic comments regarding this draft guidance document. Written comments should be submitted to the Division of Dockets Management (see **ADDRESSES**). Submit written or electronic comments by December 15, 2003 to ensure adequate consideration in preparation of the final guidance. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments may also be submitted electronically on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on this Internet site, select ''[docket number] entitled 'Studies to evaluate the safety of residues of Veterinary Drugs in Human Food: General Approach to Establish a Microbiological ADI' (VICH GL–36)'' and follow the directions.

Copies of the draft guidance document entitled ''Studies to evaluate the safety of residues of Veterinary Drugs in Human Food: General Approach to Establish a Microbiological ADI'' (VICH GL–36) may be obtained on

the Internet from the CVM home page at *http://www.fda.gov/cvm*.

Dated: October 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28373 Filed 11–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Presidential Initiative Application Forms for Funding Opportunities—New

The Consolidated Health Center Program is administered by the Health Resources and Services Administration's (HRSA) Bureau of Primary Health Care (BPHC). Grant funding opportunities are provided for Health Centers under the Presidential Initiative to Expand Health Centers. These funding opportunities use the following application forms: New Access Point Funding (NAP) form, Service Area Competition (SCA) form, Non-Competing Continuation (NCC) form and Competing Continuation (CC) forms, the Service Expansion (SE) form and the Expanded Medical Capacity (EMC) form for Consolidated Health Centers. These application forms are used by new and current Health Centers to apply for funding.

The five-year President's Initiative to Expand Health Centers will significantly impact 1,200 of the Nation's neediest communities by creating new health center sites. Additional emphasis will be given to improving and strengthening existing sites and expanding existing centers.

BPHC will assist in achieving the Initiative through the various funding opportunities under this Initiative. This year's funding increase supported the development of an additional 100 new access points and 88 significantly expanded access point. New access points will be established by Health Centers targeting the neediest communities using successful Center models. Expanded capacity will be targeted to communities where an existing Health Center's ability to provide care falls short of meeting the full need for services to uninsured and underserved populations. Funding will be provided to Health Centers to support the staff needed to serve a substantial increase in users.

Estimates of annualized reporting burden are as follows:

Type of application form	Number of respondents	Hours per response	Total burden hours
NAP	500	100	50,000
SAC	250	100	25,000
NCC	225	100	22,500
CC	675	100	67,500
EMC	225	45	10,125
SE	450	45	20,250
Total	2325	490	195,375

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 27, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–28375 Filed 11–12–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Scholarships for Disadvantaged Students Program (OMB No. 0915–0149)—Revision

The Scholarships for Disadvantaged Students (SDS) Program has as its purpose the provision of funds to eligible schools to provide scholarships to full-time, financially needy students from disadvantaged backgrounds enrolled in health professions and nursing programs.

To qualify for participation in the SDS program, a school must be carrying out

a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups (section 737(d)(1)(B) of the Public Health Service Act). A school must meet the eligibility criteria to demonstrate that the program has achieved success based on the number and/or percentage of disadvantaged students who are enrolled and graduate from the school. In awarding SDS funds to eligible schools, funding priorities must be given to schools based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities (section 737(c) of the Public Health Service Act).

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
SDS	450	1	23.5	10,575

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 27, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–28376 Filed 11–12–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 68 FR 8515–8517, February 21, 2003). This notice is to announce the re-titling of the Office of Special Programs to the Special Programs Bureau and to amend the functional statement to include functions relating to the National Hospital Bioterrorism Preparedness Program, the Smallpox Emergency Personnel Protection Act Program and the Trauma-Emergency Medical Services Systems Program. Specifically, this notice establishes the Division of Health Care Emergency Preparedness (RR5) and the Smallpox Vaccine Injury Compensation Program Office (RR6) in the newly titled Special Programs Bureau (RR) as follows:

Special Programs Bureau (RR)

Provides the overall leadership and direction for the procurement, allocation, and transplantation of human organs and bone marrow; programmatic, financial and architectural/engineering support for construction/renovation programs; operation of the Department's Vaccine Injury Compensation Program and the State Planning Grants Program. Specifically: (1) Administers the Organ Procurement and Transplantation Network and the Scientific Registry of Transplant Recipients to assure compliance with Federal regulations and policies; (2) administers the National Marrow Donor Program in matching volunteer unrelated marrow donors for transplants and studying the effectiveness of unrelated marrow donors for transplants and related treatment; (3) develops and maintains a national program of grants and contracts to organ procurement organizations and other entities to increase the availability of various organs to transplant candidates; (4) manages the national program for compliance with the Hill-Burton uncompensated care requirement and other assurances; (5) directs and administers the Section 242 hospital mortgage insurance program (through inter-agency agreement with HUD) and HHS direct and guaranteed construction loan repayment program; (6) directs and administers an earmarked grant program for the construction/renovation/equipping of health care and other facilities; (7) directs and administers the National Vaccine Injury Compensation Program; (8) directs and administers the Smallpox Emergency Personnel Protection Act Program; (9) directs and administers the State Planning Grants Program; (10) directs and administers the National Hospital Bioterrorism Preparedness Program; and (11) directs and administers the Trauma-Emergency Medical Services Systems Program.

Division of Health Care Emergency Preparedness (RR5)

The Division of Health Care Emergency Preparedness (DHCEP) facilitates the development of State, territorial and municipal terrorism preparedness programs under grants and/or cooperative agreements to improve the Nation's health care systems to respond to any terrorism or other public health emergency event. Specifically, the Division, together with other components of the Agency; (1) serves as the national focus for leadership in and coordination of Federal, State, local and non-governmental efforts to define the readiness needs for any terrorism or other public health emergency event and to assist in the development of programs that address the problems; (2) analyzes or coordinates analysis of regional or national issues and problems and recommends responses to those problems through research, training, or other actions, as indicated; (3) develops, interprets, and disseminates policies, regulations, standards, guidelines, new knowledge, and program information for the various programs and services relevant to terrorism and emergency preparedness; (4) provides technical assistance and professional consultation to field and headquarters staffs, to State and local health personnel, to other Federal agencies, and to voluntary and professional organizations on all aspects of terrorism preparedness planning efforts; (5) establishes and maintains cooperative working relationships with voluntary, professional, and other relevant entities and serves as a focal point for communications to improve terrorism preparedness; (6) coordinates within this Agency and with other Federal program efforts to extend and improve comprehensive, coordinated services and promote integrated, state-based systems of care for this program; (7) administers a program of cooperative agreements and contracts to provide comprehensive approaches to improve

terrorism preparedness; (8) works collaboratively with the Centers for Disease Control and Prevention and the Department's Office of the Assistant Secretary for Public Health Emergency Preparedness in administering the National Bioterrorism Hospital Preparedness Program. Further, HRSA has identified key stakeholders in other Federal agencies, including the Department of Defense and Homeland Security as well as key national professional organizations: (9) administers the Trauma-Emergency Medical Services Systems Program; (10) promotes coordination of terrorism preparedness under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Section 319 of the Public Health Service Act, 42 U.S.C. 201 *et seq.*) while supporting activities related to countering potential terrorist threats to civilian populations; (11) administers the Trauma-Emergency Medical Services Systems Program within the authority of Title XII of the PHS Act and provides leadership to facilitate the development of effective, comprehensive and inclusive statewide trauma systems. The program promotes trauma systems that are prepared and are responsive to emergency and disaster situations, are coordinated with State Emergency Management and disaster planning efforts. The Trauma-EMS Systems Program works to accomplish these goals by providing national leadership, performing nation system assessments, strategic planning for priority initiatives, awarding grants to support State infrastructure development, supporting the development of best practices and models for State trauma systems planning and evaluation, and coordinating related Federal activities.

Smallpox Vaccine Injury Compensation Program Office (RR6)

The Smallpox Vaccine Injury Compensation Program Office (SVICPO) administers all statutory authorities related to the operation of the Smallpox Emergency Personnel Protection Act (SEPPA). Specifically the SVICPO: (1) Evaluates petitions for compensation filed under the SEPPA through medical review and assessment of compensability for all completed claims; (2) processes awards for compensation made under the SEPPA; (3) promulgates regulations to revise the Smallpox Vaccine Injury Table; (4) develops and maintains all automated information systems necessary for program implementation; (5) provides and disseminates program information; and, (6) maintains a working relationship with other Federal and private sector partners in the administration and operation of the SEPPA.

Delegation of Authority

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this action will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this action.

This document is effective upon the date of signature.

Dated: November 4, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–28374 Filed 11–12–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of a Decision of the United States Court of Appeals for the Federal Circuit Reversing the Decision of the Court of International Trade To Sustain a Domestic Party Petition Concerning the Classification of Textile Costumes

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of the decision of the United States Court of Appeals for the Federal Circuit in the matter of *Rubie's Costume Company* v. *United States*, Appeal No. 02–1373 (decided August 1, 2003), reversing the decision of the Court of International Trade which sustained a domestic party petition seeking classification of textile costumes as wearing apparel of chapters 61 or 62 of the Harmonized Tariff Schedule of the United States (HTSUS).

SUMMARY: On August 1, 2003, the United States Court of Appeals for the Federal Circuit (CAFC) issued its decision in the matter of *Rubie's Costume Company* v. *United States*, Appeal No. 02–1373, reversing the Court of International Trade (CIT) in *Rubie's Costume Company* v. *United States*, 196 F. Supp 2d 1320 (Ct. Int'l Trade 2002). The CIT had ruled that the textile costumes before it were ''fancy dress'' of textile and therefore classifiable as wearing apparel of chapter 61, HTSUS. In reversing the CIT, the CAFC upheld the earlier classification determination of Customs and Border Protection (CBP), which classified textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel, as ''festive articles'' of chapter 95, HTSUS. This document provides notice of the CAFC decision and informs the public that imported textile costumes, which CBP determines to be of a flimsy nature and construction, lacking in durability and generally recognized as not being normal articles of wearing apparel, are to be classified and assessed duty in accordance with the CAFC decision as ''festive articles'' of chapter 95, HTSUS.

EFFECTIVE DATE: CBP began liquidating suspended entries and classifying incoming entries of merchandise in accord with the decision in the matter of *Rubie's Costume Company* v. *United States* as of October 31, 2003.

FOR FURTHER INFORMATION CONTACT: For questions regarding operational issues, contact Janet Labuda, Textile Enforcement and Operations Division, Office of Field Operations, 202–927–0414; for legal questions, contact Rebecca Hollaway, Textiles Branch, Office of Regulations and Rulings, 202–572–8814.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 2002, the Court of International Trade (CIT) issued a decision in *Rubie's Costume Company* v. *United States*, 196 F. Supp 2d 1320 (Ct. Int'l Trade 2002), in which the court ruled that certain imported textile costumes before it were classifiable as wearing apparel of chapter 61 of the Harmonized Tariff Schedule of the United States (HTSUS). The decision sustained the position of a domestic interested party under the provisions of section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). Pursuant to 19 U.S.C. 1516(f) and 19 CFR 175.31, CBP published notice of the court's decision in the **Federal Register**, 67 FR 9504, on March 1, 2002, and notified the public that, effective the day after publication of the notice in the **Federal Register**, CBP would classify merchandise of the character of the merchandise at issue, which was entered for consumption or withdrawn from warehouse for consumption, in accordance with the court's decision. See ''Notice of Decision of the United States Court of International Trade Sustaining Domestic Interested Party Petition Concerning Classification of Textile Costumes,'' 67 FR 9504 (March 1, 2002) for detailed background of the domestic interested party petition.

On August 1, 2003, the Court of Appeals for the Federal Circuit (CAFC) reversed the decision of the CIT. The

court held that the CBP classification ruling on the textile costumes at issue is persuasive and must be granted deference under *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944). The court concluded that ''textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel, are classifiable as 'festive articles.' '' The court reversed the decision of the CIT holding the merchandise at issue to be classifiable as ''wearing apparel.'' (The court's decision may be viewed on the court's Web site at *http://www.fedcir.gov).*

Under 19 CFR 175.31, CBP is not required to publish notice to the public of a decision of the CAFC reversing a cause of action before the CIT under the provisions of section 516, Tariff Act of 1930, as amended (19 CFR 1516). However, due to the length of the controversy of the classification of textile costumes and the significant interest in this issue, CBP believes notice to the public of the reversal of this decision of the CIT is warranted. CBP will take no action on entries subject to this case until the appeal period has run. See 19 CFR 176.31(b).

Dated: November 7, 2003.

Michael T. Schmitz,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 03–28409 Filed 11–12–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: December 4, 2003.

Place: Building J, Room 102, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Times: 9 a.m. ''Ambulance Safety Subcommittee; 10:30 a.m.—Main Meeting; 1 p.m. ''Counter-Terrorism Subcommittee and the Performance Technology Subcommittee.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Safety Subcommittee and Counter-terrorism Subcommittee report; Action Items review; presentation of member agency reports; and reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, December 2, 2003, via mail at NATEK Incorporated, 21355 Ridgetop Circle, Suite 200, Dulles, Virginia 20166–8503, or by telephone at (703) 674–0190, or via facsimile at (703) 674–0195, or via e-mail at *proman@natekinc.com.* This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

Security Procedures: Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass, which must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 9 a.m. until 4 p.m. Members should call in around 9 a.m. The number is 1–800–320–4330. The FICEMS conference code is ''430746#.''

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on March 4, 2004. The minutes will also be posted on the United States Fire Administration Web site at *http://www.usfa.fema.gov/ems/ficems.htm* within 30 days after their approval at the March 4, 2004, FICEMS Committee Meeting.

Dated: November 6, 2003.

R. David Paulison,

U.S. Fire Administrator, Director of the Preparedness Division.

[FR Doc. 03–28415 Filed 11–12–03; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–87]

Notice of Submission of Proposed Information Collection to OMB: Alaska Native/Native Hawaiian Institutions Assisting Communities (AN/NHAIC)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request to reinstate the information collection requirements for the grants application and reporting for Alaska Native/Native Hawaiian colleges and universities. These competitive grants promote CDEG eligible activities to expand their role and effectiveness in helping their communities with neighborhood revitalization, housing, and economic development.

DATES: *Comments Due Date:* December 15, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0206) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB

approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Alaska Native/ Native Hawaiian Institutions Assisting Communities (AN/NHAIC).

OMB Approval Number: 2528–0206.

Form Numbers: HUD–424, HUD–424B, HUD–424C, HUD424–CB, SFLLL, HUD–2880, HUD–2991, HUD–2990, HUD–2993, and HUD–2994.

Description of the Need for the Information and Its Proposed Use: This is a request to reinstate the information collection requirements for the grants application and reporting for Alaska Native/Native Hawaiian colleges and universities. These competitive grants promote CDEG eligible activities to expand their role and effectiveness in helping their communities with neighborhood revitalization, housing, and economic development.

Respondents: Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: On occasion, Semi-annually, Other Final.

Reporting Burden: Number of Respondents 20; Average response per respondent 0.4;: Total annual responses 50; Average burden per response .0.35 hrs.

Total Estimated Burden Hours: 21,125.

Status: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 6, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–28448 Filed 11–12–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–88]

Notice of Submission of Proposed Information Collection to OMB: Eligibility of a Nonprofit Corporation/ Housing Consultant Certification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This application indicates to HUD a nonprofit's ability to successfully sponsor a multifamily housing project, motivation for sponsorship, and contractual relationships that exist between the for-profit entity and the nonprofit. And additional certification requirement is intended to indicate the independence of the involved housing consultant.

DATES: *Comments Due Date:* December 15, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0057) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may also be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Eligibility of a Nonprofit Corporation/Housing Consultant Certification.

OMB Approval Number: 2502–0057.

Form Numbers: HUD–3433, HUD–3434, HUD–3435, HUD–92531.

Description of the Need for the Information and Its Proposed Use: This application indicates to HUD a nonprofit's ability to successfully sponsor a multifamily housing project, motivation for sponsorship, and contractual relationships that exist between the for-profit entity and the nonprofit. And additional certification requirement is intended to indicate the independence of the involved housing consultant.

Respondents: Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: On occasion, other application period.

Reporting Burden: Number of Respondents 290; Average response per respondent 1.1; Total annual responses 320; Average burden per response 0.3 hrs.

Total Estimated Burden Hours: 95.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 6, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–28449 Filed 11–12–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–47]

Notice of Proposed Information Collection: Comment Request; Mortgagee's Application for Insurance Benefits (Multifamily Mortgage)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject propsoal.

DATES: *Comments Due Date:* January 12, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410, or *Wayne_Eddins@hud. gov.*

FOR FURTHER INFORMATION CONTACT: Victor L. Vacanti, Operating Accountant, Multifamily Claims Branch, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3423 ext. 2808 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Application for Insurance Benefits (Multifamily Mortgage).

OMB Control Number, if applicable: 2502–0419.

Description of the need for the information and proposed use: A leader with an insured multifamily mortgage may pay an annual insurance premium to HUD. When the mortgage goes into default, the lender may elect to file with HUD a claim for insurance benefits. A requirement of the claims filing process is the submission of an application for insurance benefits, form HUD–2747. Regulation 12 U.S.C. 1713(g) and Title II, Section 207(g) of the National Housing Act provides that, ''Notwithstanding any other provision of this chapter, upon receipt, after September 2, 1964, of an application for insurance benefits on a mortgage insured under this chapter, the Secretary may terminate the mortgagee's obligation to pay premium charges on the mortgage.'' This provision is further spelled out in regulation 24 CFR part 207—Subpart B, Contract Rights and Obligations at 24 CFR 207.525(d) and 24 CFR 207.258(c)(6). This information collection satisfies the preceding requirements.

Agency form numbers, if applicable: HUD–2747.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 9; the number of respondents is 110 generating approximately 110 annual responses; the frequency of response is one claim per submission; and the estimated time needed to prepare the response is 5 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: November 5, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–28450 Filed 11–12–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–48]

Notice of Proposed Information Collection: Comment Request; Monthly Reports for Establishing Net Income

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: January 12, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly Sanford-Munson, Office of Asset Management, Policy and Participation Standards Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3730 ext. 5122 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of

information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Monthly Reports for Establishing Net Income.

OMB Control Number, if applicable: 2502–0108.

Description of the need for the information and proposed use: The information collection is necessary for HUD to assess the need for remedial actions to correct project deficiencies or to prevent a potential default of the project mortgage. The information collection is also used to monitor compliance with contractual agreements and to analyze cash flow trends as well as occupancy and rent collection levels. When a project is experiencing rent collection problems, expenses directly affect this income. Therefore, HUD is responsible for reviewing monthly trends in a project's expenses and income to prevent potential problems.

Agency form numbers, if applicable: HUD–93479, HUD–93480, HUD–93481.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 168,000; the number of respondents is 4,000 generating 48,000 annual responses; the frequency of response is monthly; and the estimated time needed to prepare the responses varies from 1 hour to 1½ hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: November 5, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–28451 Filed 11–12–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0022, Federal Fish and Wildlife Permit Applications and Reports, Migratory Birds and Eagles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice, request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. An estimate of the information collection burden is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: We will accept comments until January 12, 2004.

ADDRESSES: Send your comments on the requirement to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203; (703) 358–2269 (fax); or *anissa_craghead@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact Anissa Craghead at (703) 358–2445, or electronically to *anissa_craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB to renew approval of a collection of information for the Service's license/permit application forms for migratory bird and eagle permits.

We are submitting a request to OMB to approve: (1) The revision of the collection of information for many of the migratory bird and eagle applications (3–200–6 through 3–200–18, and 3–200–67 through 3–200–70); report forms 3–202–1 through 3–202–9, and forms 3–186 and 3–186A currently approved under OMB control number 1018–0022; and (2) the addition of forms 3–200–10b.2, and 3–202–10 through 3–202–13.

All of these forms are used by the Regional Migratory Bird Permit Offices. We are requesting a 3-year term of approval for this information collection activity. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0022.

Revisions to the currently approved forms include modifications of the format and content of the application forms so that they will be easier to understand and easier for the applicant to complete. Five new forms have been added to the information collection. The Special Canada Goose Permit Annual Report (form 3–202–10) and Eagle Depredation Permit Annual Report (form 3–202–11) forms will simplify the information collection process on the public in terms of reporting requirements for those permits. The Special Purpose Possession (Education) Acquisition and Transfer Request (form 3–202–12) will facilitate Service approval for acquisitions and transfers of birds held for education. The Migratory Bird Donation to Public Institution form (form 3–202–13) will provide a standard form for use by museums and other public scientific and educational institutions to document donations of dead birds salvaged by the general public and deposited with institutions. A completed form 3–202–13 would not be submitted to the Service, except upon special request to the repository institution. The Request for Permission to Release Contact Information About Federally Permitted Migratory Bird Rehabilitators (form 3–200–10b.2) will enable us to ask holders of migratory bird rehabilitation permits for permission to make contact information available to the general public. The new forms are noted in the table below.

The information obtained from the applications and report forms will be used by the Service to determine eligibility of applicants for permits they are requesting according to criteria in various Federal wildlife conservation laws, international treaties, and regulations on the issuance, suspension, revocation, or denial of permits, monitor permit compliance, and track species taken from the wild.

The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1539), the Migratory Bird Treaty Act (16 U.S.C. 704), the Lacey Act (18 U.S.C. 42–44), the Bald and Golden Eagle Protection Act (16 U.S.C. 668), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (27 UST 108), and are contained in Service regulations in Chapter I, Subchapter B of Title 50 Code of Federal Regulations (CFR). Generic permit application and record keeping requirements shared by our permit-

issuing offices have been consolidated in 50 CFR part 13. The following table lists the application forms, with their respective burden estimates and applicable regulations, that we plan to submit to OMB for approval under the Paperwork Reduction Act.

Activity & application & report form number (* means report form used for more than one permit activity)	Total No. of responses (annually)	Estimated completion time (hr)	Total annual burden hours	Regulatory authority
Import/Export, 3–200–6	61	1	61	50 CFR 21.2, 21.11, 21.21
Scientific Collecting, 3–200–7	91	4	364	50 CFR 21.2, 21.11, 21.23
Annual Report, 3–202–1 *	484	1	484	
Donation to Public Museum, 3–202–13 (New)	1,000	[1] 0.17	170	
Taxidermy, 3–200–8	604	1	604	50 CFR 21.2, 21.11, 21.24
Waterfowl Sale & Disposal, 3–200–9	98	1	98	50 CFR 21.2, 21.11, 21.25
Notice of Transfer, 3–186 *	8,002	[1] 0.17	1,333	
Annual Report, 3–202–2	1,540	[4] 0.5	770	
Canada Goose, 3–200–57	3	6	18	50 CFR 21.2, 21.11, 21.26
Annual Report, 3–202–10 (New)	3	1	3	
Special Purpose Permits				
—Salvage, 3–200–10a	184	1	184	50 CFR 21.2, 21.11, 21.27
Annual Report—Salvage, 3–202–3	1,772	1	1,772	
—Rehabilitation, 3–200–10b	129	2.5	322	
Permission to Release Information 3–200–10b.2 (New)	711	0.17	120	
Information 3–200–10b.2 (New),	2,134	1.5	3,201	
Annual Report—Rehab., 3–202–4	86	2.5	215	
—Education Possession/Live, 3–200–10c	1,000	[3] 0.34	340	
Acquisition and Transfer Request, 3–202–12 (New)	571	1	571	
Annual Report—Edu-Poss/Live, 3–202–5 *	56	2	112	
—Education Possession/Dead, 3–200–10d	167	1	167	
Ann. Report—Edu-Poss/Dead, 3–202–5 *	18	1	18	
—Game Bird Propagation, 3–200–10e	300	[1] 0.17	50	
Notice of Transfer, 3–186*	73	[4] 0.5	36	
Ann. Report—Game Bird Prop	20	1	20	
Falconry, 3–200–11	283	1	283	50 CFR 21.2, 21.11, 21.28
Disposition Report, 3–186–A *	11,000	[1] 0.17	1,833	
Raptor Propagation, 3–200–12	48	1.5	72	50 CFR 21.2, 21.11, 21.30
Disposition Report, 3–186–A *	5,000	[1] 0.17	833	
Annual Report—Raptor Prop, 3–202–8	389	1	389	
Depredation, 3–200–13	788	1.5	1,182	50 CFR 21.2, 21.11, 21.41
Annual Report—Depredation, 3–202–9	2,542	1	2,542	
Bald & Golden Eagle				
—Exhibition, 3–200–14a	31	2.5	77	50 CFR 22.1, 22.2, 22.12, 22.21
Annual Report—Education, 3–202–5 *	1,743	1	1,743	
—Scientific Collecting/Research, 3–200–14b	2	3	6	
Ann. Report—Sci. Collecting, 3–202–1 *	24	1	24	
Eagle—Native American Religious	1,083	[4] 0.5	541	50 CFR 22.1, 22.2, 22.12, 22.22
—Permit Application, Shipping. Request, & Tribal Certification 3–200–15/15a.				
Take of Depredating Eagles, 3–200–16	11	1	11	50 CFR 22.1, 22.2, 22.12, 22.23
Annual Report—Eagle	11	1	11	
Depredation, 3–202–11 (New).				
Eagle Falconry, 3–200–17	2	1	2	50 CFR 22.1, 22.2, 22.12, 22.24
Take of Golden Eagle Nests, 3–200–18	2	4	8	50 CFR 22.1, 22.2, 22.12, 22.25
Renewal of a Permit, 3–200–68	7,444	[2] 0.25	1,861	50 CFR 13.21, 13.22

Activity & application & report form number (* means report form used for more than one permit activity)	Total No. of responses (annually)	Estimated completion time (hr)	Total annual burden hours	Regulatory authority
CITES Import/Export/Eagle Transport for Exhibition/Scientific Research, 3–200–69.	50	1	50	50 CFR 22.21, 23.11, 23.12, 23.13, 23.15
CITES Import/Export/Eagle Transport for Indian Religious Purposes, 3–200–70.	250	1	250	50 CFR 22.22, 23.11, 23.12, 23.13, 23.15
Total	50,037		22,864	

[1] 10 minutes.
[2] 15 minutes.
[3] 20 minutes.
[4] 30 minutes.

OMB Control Number: 1018–0022.

Title: Federal Fish and Wildlife Permit Applications and Reports, Migratory Birds and Eagles.

Service Form Numbers: 3–200–6 through 3–200–18, 3–200–67 through 3–200–70, 3–202–1 through 3–202–13, 3–186, 3–186A.

Description of Respondents: Individuals; zoological parks; museums; universities; scientists; taxidermists; businesses; and State, local, Tribal and Federal governments.

Frequency of Collection: On occasion.

Total Annual Responses: 50,037.

Total Annual Burden Hours: 22,864.

We invite comments concerning this information collection on: (1) Whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (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. This information collection is part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: October 21, 2003.

Cyndi Perry,

Chief, Branch of Bird Conservation, Division of Migratory Bird Management.

[FR Doc. 03–28386 Filed 11–12–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Comprehensive Conservation Plan and Environmental Assessment for the Minnesota Wetland Management Districts (WMDs), Big Stone, Detroit Lakes, Fergus Falls, Litchfield, Morris, and Windom

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the final Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) is available for Big Stone, Detroit Lakes, Fergus Falls, Litchfield, Morris, and Windom WMDs. The CCPs were prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969, and we describe how the Service intends to manage these districts over the next 15 years.

DATES: Implementation of the CCPs will not begin sooner than 30 days following the publication of this **Federal Register** notice.

ADDRESSES: Copies of the CCPs are available on compact diskette or hard copy, and you may obtain a copy by writing the applicable WMD: Big Stone Wetland Management District, Rural Route 1, Box 25, Odessa, MN 56276–9706; Detroit Lakes Wetland Management District, 26624 North Tower Road, Detroit Lakes, MN 56501–7959; Fergus Falls Wetland Management District, 21932 State Highway 210, Fergus Falls, MN 56537–7627; Litchfield Wetland Management District, 22274–615th Avenue, Litchfield, MN 55355–2900; Morris Wetland Management District, 43875–230th Street, Morris, MN 56267–9735; or Windom Wetland Management District, 49663 County Road 17, Windom, MN 56101–3026. Copies of the CCP can also be accessed and downloaded at the following Web site address: *http://www.midwest.fws.gov/planning/wmdplanning.htm.*

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*) requires a CCP and the National Environmental Policy Act compliance (42 U.S.C. 4321–4370d). The purpose in developing CCPs is to provide district managers with a 15-year strategy for achieving district purposes and contribute toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The CCPs will be reviewed and updated at least every 15 years.

The WMD Waterfowl Production Areas purposes are: ''* * * as Waterfowl Production Areas'' subject to ''* * * all of the provisions of such Act [Migratory Bird Conservation Act] * * * except the inviolate sanctuary provisions * * *'' and ''* * * for any other management purpose, for migratory birds.''

The Minnesota WMDs are part of a unique natural ecosystem and an equally unique legacy of human partnership. Six WMDs are located in western Minnesota: Big Stone WMD, Detroit Lakes WMD, Fergus Falls WMD, Litchfield WMD, Morris WMD, and Windom WMD. These WMDs used a joint process to prepare the CCPs, resulting in six separate CCPs.

Wetland Management Districts are unique collections of land that are not national wildlife refuges, but are managed as part of the National Wildlife Refuge System. A WMD is the Federal administrative unit that is charged with acquiring, overseeing and managing Waterfowl Production Areas (WPAs) and easements within a multi-county area. Waterfowl Production Areas are wetlands and surrounding upland grasslands purchased by the Service to

provide nesting habitat for waterfowl. Several WPAs of anywhere from a few acres to a few hundred acres are scattered throughout a several-county area. Waterfowl Production Areas within the Minnesota WMDs average about 210 acres in size.

Wetland Management Districts exemplify how partnerships can succeed in preserving habitat. From the Duck Stamp Act of 1934 to the Wetland Loan Act of 1961 to the Small Wetland Acquisition Program of 1962, the Service, and hunters, environmentalists, and communities have worked together to preserve land and wildlife. Funding for acquisition of WPAs comes in large part from funds generated through the Duck Stamp Act, making duck hunters a key partner in preserving critical habitat within the prairie pothole region.

When the Service buys land for the WMDs, it is the result of negotiation with a willing seller as well as the State of Minnesota, the local county and the township. Working with counties, the Service has established a goal for acres of acquisition in each WMD, and each county within each WMD has agreed to that goal. Prior to final acquisition approval by the State of Minnesota (through the Land Exchange Board, which is headed by the Governor), each tract is discussed and reviewed in detail with the commissioners of the county where the tract is located. (There are 28 counties within the six-district planning area.) Township boards are also informed of these proposed acquisitions and invited to attend and participate in the meeting with the county commissioners. The meetings are open to the public.

Wetland Management Districts are managed differently than national wildlife refuges. Waterfowl Production Areas are assumed to be open to the public unless closed for a specific reason. In Minnesota, WPAs are open to the Service's Big Six priority public uses: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

Big Stone WMD—The WMD was established in 1996 to acquire and manage lands under the Small Wetlands Acquisition Program within Lincoln and Lyon counties. It currently includes 11 WPAs covering 2,343 acres of fee title lands, 15 habitat and/or wetland easements covering 1,547 acres.

Detroit Lakes WMD—The 5 county WMD currently manages 41,615 fee acres on 163 WPAs and 320 easements covering 13,300 acres.

Fergus Falls WMD—The 5 county WMD currently manages 215 WPAs totaling 43,417 acres and 1,136 easements covering 113,525 acres.

Litchfield WMD—The 7 county WMD was established in 1978 and today manages 148 WPAs covering more than 33,000 acres of fee title lands, 453 easements covering 36,154 acres.

Morris WMD—The 8 county WMD, originally established in 1964 as the Benson WMD, manages 246 WPAs totaling 51,208 acres in fee title ownership and 646 easements encompassing 23,182 acres.

Windom WMD—The 12 county WMD was established in 1990. It includes 59 WPAs covering 12,669 acres of fee title lands, 51 easements covering over 1,847 acres.

Three management alternatives were considered: (1) Acquire no additional land and maintain management on current land; (2) Increase land holdings to goal acres and maintain current management practices (current management); and (3) Increase land holdings to goal acres and expand management for waterfowl, other trust species and the public (preferred alternative).

The CCP represents the preferred alternative and describes a future in which the Service continues to acquire land to reach the goal acres agreed to by the State of Minnesota and each County within the District. The WMDs will strive to preserve and maintain diversity and increase the abundance of waterfowl and other key wildlife species in the Northern Tallgrass Prairie Ecosystem. They will restore wetlands and prairie as habitat for migratory waterfowl. Our intent will be to increase the block size of WPAs from an average of 210 acres to benefit waterfowl species as well as grassland birds. Working with the Minnesota Department of Natural Resources, we will reintroduce native species on WPAs. Coordinated, standardized, cost-effective and defensible methods will be implemented for gathering and analyzing habitat and population data. Limited continued use of food plots and feeder cribs to support resident wildlife, notably white-tailed deer and pheasants will be allowed. The WMDs will work with other WMDs in Minnesota as well as neighboring states (Iowa, Wisconsin, South Dakota and North Dakota) to develop more consistency in policies for habitat, public use and resource protection. It is our goal to promote a greater understanding and awareness of the WMDs' programs, goals and objectives within the public, partnerships, tribes and government agencies.

Dated: May 6, 2003.

Gerry Jackson,

Acting Regional Director.

Editorial note: This document was received at the Office of the Federal Register on November 7, 2003.

[FR Doc. 03–28430 Filed 11–12–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of Draft Environmental Impact Statement for the Proposed Wanapa Energy Center, Umatilla County, OR

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), with the cooperation of the Bonneville Power Administration (BPA) and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), intends to file a draft Environmental Impact Statement (DEIS) with the U.S. Environmental Protection Agency for the proposed Wanapa Energy Center, Umatilla County, Oregon, and that the DEIS is now available for public review. The purpose of the proposed project is to help provide for the economic development of the CTUIR and for the power needs of the Pacific Northwest. This notice also announces public hearings for the public to provide comments on the DEIS.

DATES: Written comments on the DEIS must arrive by December 29, 2003. Public hearings on the DEIS will be held December 3 and December 4, 2003, starting at 7 p.m.

ADDRESSES: You may hand carry written comments to the Umatilla Agency, 46807 B Street, Mission, Oregon, or mail them to Philip Sanchez, Superintendent, Bureau of Indian Affairs, Umatilla Agency, P.O. Box 520, Pendleton, OR 97801.

The December 3, 2003, public meeting will be in Pendleton, Oregon. The December 4, 2003, public meeting will be in Hermiston, Oregon. Exact addresses for the hearings will be determined at a later date. These may be obtained from the **FURTHER INFORMATION CONTACT** listed below.

To obtain a copy of the DEIS, please write to Jerry Lauer, Natural Resource Officer, Division of Natural Resources Management, U.S. Department of the Interior, Bureau of Indian Affairs, Umatilla Agency, P.O. Box 520,

Pendleton, Oregon 97801. Copies of the DEIS are available for public review at the Umatilla Agency on the CTUIR Reservation, Mission, Oregon; at the Pendleton Public Library, 500 SW Dorian, Pendleton, Oregon; and at the Hermiston Public Library, 238 E. Gladys Avenue, Hermiston, Oregon. Copies of the DEIS have also been sent to agencies and individuals who participated in the scoping process and to all others who have previously requested copies of the document.

FOR FURTHER INFORMATION CONTACT: Jerry Lauer, (541) 278–3790.

SUPPLEMENTARY INFORMATION: The proposed action is to lease Indian trust land upon which Diamond Wanapa ILP, CTUIR, the Eugene, OR, Water and Electric Board, the City of Hermiston, and the Port of Umatilla propose to jointly build and operate the Wanapa Energy Center, an approximately 1200 megawatt (Mw), natural gas-fired electric power generation plant that would provide electrical energy to the BPA grid system. The Center's design features two similar blocks of combined cycle, each having a nominal capacity of 600 Mw. A block would consist of (1) two combustion turbines; (2) two heat recovery steam generators (HRSG) that can be fired by auxiliary duct burners; (3) 180 foot exhaust stacks; (4) one steam turbine in a 2 by 1 configuration; and (4) associated plant equipment. The proposed project also would include a switch yard, cooling towers, storage tanks, natural gas supply pipeline, water supply pipeline, electrical power transmission line, and other related facilities. The plant would be constructed in two phases, each consisting of two gas turbines, two HRSGs, two stacks, one steam turbine, one cooling tower, three generators, and supporting facilities. The maximum plant output would be approximately 1,485 Mw.

Natural gas would be the sole fuel used for the combustion turbines and duct burners. This would be provided through a new, 9.9 mile lateral pipeline that would extend from a source in the vicinity of Stanfield, Oregon, approximately 10 miles north to the proposed project site. A new 500 kV electrical transmission line would extend from the project site to the McNary Substation on the Columbia River.

Water demand for the facility is estimated to be from 3 million gallons per day (about 2,500 acre-feet per year) at 600 Mw production to 6 million gallons per day (about 5,000 acre-feet per year) at 1200 Mw production. Pre-allocated municipal water would be obtained under the City of Hermiston's and the Port of Umatilla's allocated water supply from the Columbia River. Currently, the proposed power plant's blow-down water discharge location is the Feed Canal, approximately 5 miles south of the project site. The Feed Canal empties into Cold Springs Reservoir, approximately 1 mile downstream of the proposed discharge point. The water discharge pipeline would follow and be located with the proposed natural gas pipeline lateral to the discharge point.

In addition to the proposed action and no action, alternatives analyzed through the DEIS include routing options for the gas supply pipeline and transmission line. They are as follows:

Gas Supply Pipeline Route Alternatives. There are two alternatives that would be approximately the same 9.9 mile length as the proposed route, but would follow a more eastern (Alternative 1–GSP) or a more western (Alternative 2–GSP) route. All three would begin at the Stanfield Compressor Station and terminate at the proposed power plant. Alternative 1–GSP is about 53,500 feet (10.13 miles) long. From the plant, the line would follow the proposed route for approximately 1.4 miles, then continue farther eastward about 2.3 miles along highway 730 before proceeding southward approximately 4.4 miles to the existing Northwest Gas Right of Way (ROW). Once co-located along this ROW, it would follow the existing line southeastward about 2 miles to the interconnect point at the Stanfield Compressor Station. This route would follow existing roads in a rural area for the majority of its length.

Alternative 2–GSP is about 53,700 feet (10.17 miles) long. From the proposed power plant, the line would follow the proposed route for approximately 1,000 feet, at which point it would proceed due west for approximately 2,000 feet. It would then proceed about 4 miles due south to the Northwest Gas ROW and follow the existing line southeastward approximately 5.6 miles to interconnect with source pipelines at the Stanfield Compressor Station.

Transmission Line Route Alternatives. In addition to the route described in the proposed action, three alternative transmission line routes from the plant site to McNary Substation are evaluated in the DEIS. These range from 3.7 to 4.0 miles in length. Alternative 1–TLR would include 21,900 feet of single-circuit and 5,800 of double-circuit line (5.25-miles combined. The route would traverse directly south from the project site, cross Highway 730, and then enter and follow the same alignment as the proposed route, parallel to the existing BPA ROWs west/ northwest and north.

Alternative 2–TLR would be a 19,400-foot (3.67-mile) long single-circuit line. It would run northwest from the project site until it neared and paralleled the bluffs above the Columbia River, then traverse southwest into the substation. This alternative would be located in an entirely new ROW. Alternative 3–TLR would be about a 20,900-foot (3.96-mile) long single-circuit line. The route would traverse west from the project site until it passed McNary Beach Access Road, proceed north to where the Alternative 2 route turns southwest, then follow the Alternative 2 route into the substation.

Public Participation

The public has participated throughout the development of this DEIS. The Notice of Intent to prepare an EIS was filed in the **Federal Register** on October 22, 2001 (66 FR 53430). Public scoping meetings were held in Pendleton, Oregon, on November 5, 2001, and in Hermiston, Oregon, on November 6, 2001, to identify issues and content for consideration in the EIS. On July 28, 2003, an open house was held in Hermiston, Oregon, to update the public on the EIS process for the proposed project. All comments presented throughout the process have been considered.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority: This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the

Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: November 6, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–28394 Filed 11–12–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF INTERIOR

Notice of Availability of a Record of Decision on the Final Environmental Impact Statement for the General Management Plan, Carl Sandburg Home National Historic Site, North Carolina

AGENCY: National Park Service.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91–190, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the General Management Plan, Carl Sandburg Home National Historic Site, North Carolina. On September 19, 2003, the Acting Regional Director, Southeast Region approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the Preferred Alternative contained in the Final Environmental Impact Statement issued on July 23, 2003. The following course of action will occur under the preferred alternative:

In the preferred alternative, the park serves as a national focal point for learning about Carl Sandburg. Access to more in-depth information about his life and work at Connemara would be provided through an extensive internet database and other high technology mass media formats. Visitors who come to the site in person would find extraordinary opportunities to participate in interpretive programs. The selected alternative provides high quality museum space where visitors can gain additional access to information and objects currently housed in the museum preservation facility. Providing a high quality interpretive venue is considered an essential component of the alternative. Additional interpretive venues would be created by rehabilitating one or more historic structures near the main house or barn for interpretive program areas, renovating the existing Front Lake visitor information station to improve its interpretive and visitor services function, and creating a visitor interpretive center outside the current authorized boundary of the park. A Congressionally legislated boundary expansion of up to 110 acres would provide critical views and boundary protection. The location of the proposed 110 acre boundary expansion is illustrated in Chapter Two of the GMP/FEIS. Authorization to acquire approximately 3 to 5 acres for a 5,000 sf visitor center, parking for approximately 60 cars, and associated landscaping is also recommended. Given the unpredictable availability of funding and property, an exact location for the visitor center and parking area cannot be identified at this time; however, any selected site would be located west of Highway 25 and south of Little River Road in the Village of Flat Rock. Any property considered for acquisition by the National Park Service would be purchased under a willing seller/willing buyer arrangement, without the exercise of eminent domain.

This course of action plus three other alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding of no impairment to park resources and values, measures to minimize potential environmental consequences, and an overview of public involvement in the decision-making process.

DATES: The Record of Decision for the General Management Plan and Final Environmental Impact Statement for Carl Sandburg Home National Historic Site was signed by the Acting Regional Director for the National Park Service Southeast Region on September 19, 2003.

ADDRESSES: Copies of the Record of Decision are available from the Superintendent, Carl Sandburg Home National Historic Site, 1928 Little River Road, Flat Rock, North Carolina, 28731.

FOR FURTHER INFORMATION CONTACT: Superintendent, Carl Sandburg Home National Historic Site, 1928 Little River Road, Flat Rock, North Carolina, 28731. Telephone: 828–693–4178.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://www.nps.gov/carl.*

Dated: September 19, 2003.

Wally Hibbard,

Acting Regional Director, Southeast Region.

[FR Doc. 03–28387 Filed 11–12–03; 8:45 am]

BILLING CODE 4310–L6–P

DEPARTMENT OF THE INTERIOR

Notice of Intent To Prepare a General Management Plan and Environmental Impact Statement for Abraham Lincoln Birthplace National Historic Site

AGENCY: National Park Service.

ACTION: Notice.

SUMMARY: The National Park Service will prepare an Environmental Impact Statement on the General Management Plan for Abraham Lincoln Birthplace National Historic Site. This notice is being published in accordance with 40 CFR 1506.6. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the National Historic Site. This General Management Plan/Environmental Impact Statement is being prepared in response to the requirements of the National Parks and Recreation Act of 1978, Pub. L. 95–625, and in accord with Director's Order Number 2, the planning directive for National Park Service units.

The National Park Service will conduct public scoping meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to the management of Abraham Lincoln Birthplace National Historic Site. Representatives of the National Park Service will be available to discuss issues, resource concerns, and the planning process at each of the public meetings. Suggestions and ideas for managing the cultural and natural resources and visitor experiences at the park are encouraged. Anonymous comments will not be considered. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. However, individual respondents may request that we withhold their names and addresses from the public record, and we will honor such requests to the extent allowed by law. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment.

DATES: Locations, dates, and times of public scoping meetings will be published in local newspapers and may

also be obtained by contacting the park Superintendent. This information will also be published on the General Management Plan Web site *(http://www.nps.gov/abli)* for Abraham Lincoln Birthplace.

ADDRESSES: Scoping suggestions should be submitted to the following address to ensure adequate consideration by the National Park Service: Superintendent, Abraham Lincoln Birthplace National Historic Site, 2995 Lincoln Farm Road, Hodgenville, Kentucky 42748, Telephone: 270–358–3137, e-mail: *Abli_Superintendent@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Superintendent, Abraham Lincoln Birthplace National Historic Site, 2995 Lincoln Farm Road, Hodgenville, Kentucky 42748, Telephone: 270–358–3137, e-mail: *Abli_Superintendent@nps.gov.*

SUPPLEMENTARY INFORMATION: Abraham Lincoln Birthplace National Historic Site is located about 3 miles south of Hodgenville, Kentucky, on U.S. Highway 31E and Kentucky Highway 61. The park was authorized on June 11, 1940, and now consists of more than 340 acres. The park was established in 1933 when it was transferred from the War Department to the National Park Service. The site contains a cabin, symbolic of the one in which Lincoln was born, preserved in a memorial building at the site of his birth. The Master Plan was completed in 1964 and in the ensuing years much has changed. A boundary change occurred in 1998, which added a Boyhood Home Unit to the park. This area contains the site of the Lincoln farm along with the field and surrounding woodland area belonging to that farm. Also the site contains a historic tavern and replica cabin. A General Management Plan and Environmental Impact Statement would provide the park with better guidance and direction in regard to management of natural and cultural resources and providing a quality visitor experience.

The plan will provide direction to correct existing management deficiencies through the establishment of management prescriptions, carrying capacities and appropriate types and levels of development and recreational use for all areas of the park. Resource protection, visitor experiences and community relationships will be improved through completion and implementation of the General Management Plan.

Public documents associated with the planning effort, including all newsletters, will be posted on the Internet through the Park's Web site at *http://www.nps.gov/abli.*

The Draft and Final General Management Plan and Environmental Impact Statement will be made available to all known interested parties and appropriate agencies. Full public participation by federal, state, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this Environmental Impact Statement is Patricia A. Hooks, Acting Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: September 23, 2003.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 03–28388 Filed 11–12–03; 8:45 am]

BILLING CODE 4310–L6–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–453]

Conditions of Competition for Milk Protein Products in the U.S. Market

AGENCY: United States International Trade Commission.

ACTION: Rescheduling of public hearing.

EFFECTIVE DATE: November 5, 2003.

SUMMARY: The public hearing on this matter, scheduled for December 4, 2003, has been rescheduled to December 11, 2003. The public hearing will be held at the U.S. International Trade Commission building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on December 11, 2003. All interested persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SE., Washington, DC 20436, no later than 5:15 p.m., November 26, 2003. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., December 1, 2003; the deadline for filing post-hearing briefs or statements is 5:15 p.m., December 24, 2003.

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Mr. Jonathan Coleman, project leader (202–205–3465) or Mr. Warren Payne, deputy project leader (202–205–3317) of the Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD Terminal on (202–205–1107).

SUPPLEMENTARY INFORMATION: This investigation is being conducted at the request of the Senate Committee on Finance in its letter of May 14, 2003. The Commission plans to submit its report by May 14, 2004. Notices of institution of the investigation and an earlier scheduled hearing date were published in the **Federal Register** of June 11, 2003 (68 FR 35004).

The Commission is particularly interested in receiving testimony with respect to the following:

(1) the end use applications of various milk protein products;

(2) the ability of different milk and non-milk proteins to substitute for each other in end use applications, considering both the functional and nutritional aspects that impact the substitutability of different proteins;

(3) the different production processes associated with various forms of milk protein and the impact of the production process on their nutritional and functional characteristics;

(4) the impact of U.S. government intervention on the profitability of commercial milk protein concentrate and casein production in the United States;

(5) the impact of imports of milk proteins on U.S. farm-level milk prices;

(6) the impact of foreign government intervention on the ability of imported milk proteins to compete in the U.S. market; and

(7) the global market for milk protein products, especially trade involving high-value or customized dairy products.

Written Submissions: As provided for in the Commission's prior notices, in lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice

and Procedure (19 CFR 201.6). All written submissions must conform with the provisions of section 201.8 of the Commission's Rules. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.18) (*see* Handbook for Electronic Filing Procedures, *ftp://FTP.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on December 24, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202–205–2000). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

List of Subjects

Milk proteins, government intervention, tariffs, and imports.

Issued: November 6, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–28426 Filed 11–12–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1022 (Final)]

Refined Brown Aluminum Oxide from China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of refined brown aluminum oxide, provided for in subheading 2818.10.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). Concurrently, the Commission finds that critical circumstances do not exist with respect to imports of the subject product from China.

Background

The Commission instituted this investigation effective November 20, 2002, following receipt of a petition filed with the Commission and Commerce by Washington Mills Company, Inc., North Grafton, MA.[3] The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of refined brown aluminum oxide from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C.1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 23, 2003 (68 FR 28255). The hearing was held in Washington, DC, on September 23, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 10, 2003. The views of the Commission are contained in USITC Publication 3643 (November 2003), entitled *Refined Brown Aluminum Oxide from China: Investigation No. 731–TA–1022 (Final).*

Issued: November 7, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–28427 Filed 11–12–03; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Daniel R. Pearson not participating.

[3] On November 27, 2002, the petition was amended to include two additional petitioners, C–E Minerals, King of Prussia, PA, and Treibacher Schleifmittel Corporation, Niagara Falls, NY.

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications for 2003 Under the Federal Unemployment Tax Act

On October 31, 2003, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.,* thereby enabling employers who make contributions to state unemployment funds to obtain certain credits against their liability for the federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Dated: November 3, 2003.

Emily Stover DeRocco,

Assistant Secretary.

Secretary of Labor, Washington

October 31, 2003.

The Honorable John W. Snow,
Secretary of the Treasury, Washington, DC 20220

Dear Secretary Snow: Transmitted herewith are an original and one copy of the certifications of the states and their unemployment compensation laws for the 12-month period ending on October 31, 2003. One is required with respect to the normal federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986 (IRC), and the other is required with respect to the additional tax credit by Section 3303 of the IRC. Both certifications list all 53 jurisdictions.

Sincerely,

Elaine L. Chao.

Enclosures.

Certification of States to the Secretary of the Treasury Pursuant to Section 3304(c) of the Internal Revenue Code of 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named states to the Secretary of the Treasury for the 12-month period ending on October 31, 2003, in regard to the unemployment compensation laws of those states which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut

Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Oregon
Pennsylvania
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Ohio
Oklahoma
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Island
Washington
West Virginia
Wisconsin

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 2003.

Elaine L. Chao
Secretary of Labor.

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named states, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 2003:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maryland
Maine
Massachusetts
Oregon
Pennsylvania
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Ohio
Oklahoma
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03–28404 Filed 11–12–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Notice of Meetings and Agenda

The fall meetings of committees of the Labor Research Advisory Council will be held on December 8, 9, 10, and 19, 2003. All of the meetings will be held in the Conference Center, of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Monday, December 8, 2003

9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9

1. Report on impact of 2004 budget on Office of Employment and Unemployment Statistics programs, including Mass Layoff Statistics
2. Latest analysis on the divergence in measured employment change between the Current Population Statistics (CPS) and Current Employment Statistics (CES) surveys
3. Update on CPS development work:

a. efforts to develop labor force statistics for the disabled

b. developing model-based CPS estimates (to supplement more variable sample-based estimates) for small demographic groups

4. Report on new Business Employment Dynamics data released September 30
5. Topics for the next meeting

Tuesday, December 9, 2003

9:30 a.m.—Committee on Prices and Living Conditions—Meeting Room 9

1. Electronic data collection methods in the Consumer, Producer and International price programs
2. Treatment of the addition of fees to prices of some consumer items in the Consumer Price Index
3. Other business
4. Topics for the next meeting

1:30 p.m.—Committee on Compensation and Working Conditions—Meeting Room 9

1. Changes in Classification Systems—issues and plans

a. Industry classification

b. Occupational classification

c. Area classification (reflecting results of the 2000 census)

2. Employee Benefit Data from National Compensation Survey—Review of recently released information and plans for additional outputs
3. Other topics and new business identified by the members
4. Topics for the next meeting

Wednesday, December 10, 2003

1:30 p.m.—Committee on Productivity, Technology and Growth—Meeting Room 9

1. Status of the Occupational Statistics and Employment Projections programs
2. Perspectives on issues important to the 2002–2012 projections
3. Wage calculation in the Occupational Employment Survey compared to Current Population Survey earnings data
4. Trends in productivity and hours in non-farm business and manufacturing since 2001
5. Recent developments in the industry productivity program; newly released industry productivity data on a North American Industry Classification System (NAICS) basis; new multifactor productivity measure for Airlines
6. Topics for the next meeting

Committee on Foreign Labor Statistics—Meeting Room 9

1. Study of family structure and employment patterns for 12 developed countries
2. Recent activities of the Division of International Technical Cooperation
3. Topics for the next meeting

Friday, December 19, 2003

1:30 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 9

1. Results of the 2002 Census of Fatal Occupational Injuries
2. Survey of Occupational Injuries and Illnesses Update OSHA recordkeeping changes conversion to NAICS, Internet collection
3. New hours data for days away from work cases, including a review of what hours data would be available from the three States (Oregon, Washington, and Delaware) that use workers' compensation data
4. Special surveys on occupational safety and health issues
5. Fatal and nonfatal work injuries sustained by Hispanic agricultural workers
6. Topics for the next meeting

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on 202–691–5970.

Signed at Washington, DC, this 5th day of November, 2003.

Kathleen P. Utgoff,

Commissioner.

[FR Doc. 03–28406 Filed 11–12–03; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Ventilation Plans, Tests, and Examinations in Underground Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 75.310, 312, 342, 351, 360, 361, 362, 363, 364, 370, 371, and 382.

DATES: Submit comments on or before January 12, 2004.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet e-mail to *stoehr.melissa@dol.gov.* Ms. Stoehr can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *stoehr.melissa@dol.gov* (Internet e-mail), (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

An underground mine is a maze of tunnels that must be adequately ventilated with fresh air to provide a safe environment for miners. Methane is liberated from the strata, and noxious gases and dusts from blasting and other mining activities may be present. The explosive and noxious gases and dusts must be diluted, rendered harmless, and carried to the surface by the ventilating currents. Sufficient air must be provided to maintain the level of respirable dust at or below 2 milligrams per cubic meter of air and air quality must be maintained in accordance with MSHA standards. Mechanical ventilation equipment of sufficient capacity must operate at all times while miners are in the mine. Ground conditions are subject to frequent changes, thus sufficient tests and examinations are necessary to ensure the integrity of the ventilation system and to detect any changes that may require adjustments in the system. Records of tests and examinations are necessary to ensure that the ventilation system is being maintained and that changes which could adversely affect the integrity of the system or the safety of the miners are not occurring. These examination requirements of §§ 75.310, 75.312, 75.342, 75.351, 75.360 through 75.364, 75.370, 75.371, and 75.382 also incorporate examinations of other critical aspects of the underground work environment such as roof conditions and electrical equipment which have historically cased numerous fatalities if not properly maintained and operated.

II. Desired Focus of Comments

MSHA 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA home page *(http://www.msha.gov)* and then choosing ''Statutory and Regulatory

Information'' and ''Federal Register Documents.''

III. Current Actions

Records of tests and examinations are necessary to ensure that the ventilation system is being maintained and that changes which could adversely affect the integrity of the system or the safety of the miners are not occurring.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Ventilation Plans, Tests, and Examinations in Underground Coal Mines.

OMB Number: 1219–0088.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 711.

Average Time Per Response: 1.1 hour.

Total Burden Hours: 2,068,839.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $75,828.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 5th day of November, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–28405 Filed 11–12–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Public Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to seek approval of this information collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 et seq.), and as part of the continuing effort to reduce paperwork and respondent burden, NSF is inviting the general public and other Federal agencies to comment on this proposed information collection.

DATES: Written comments should be received by January 12, 2004 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESS: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton at (703) 292–7556, or e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Data Collection on Public Understanding of Science and Technology.

Type of Request: Intent to seek approval of an information collection for three years.

Proposed Project: For over twenty years, the National Science Foundation (NSF) has conducted a series of surveys to collect information about public attitudes toward and understanding of science and technology. NSF is currently reconsidering its data collection strategy. While the redesign is in process, NSF wishes to collect data on a limited number of key questions to maintain the continuity of its time series data and alert policy officials to significant changes, if any, in historic levels of public understanding and/or support for sciences and technology. For these purposes, NSF plans to add questions and requiring an average of 15 minutes of time per respondent to an ongoing, high quality survey with consistently high response rates (The University of Michigan Survey of Consumer Attitudes).

Use of the Information: The primary immediate use of the data will be in Science and Engineering Indicators—2006, a biannual statistical report from the National Science Board to the President and Congress on the state of science and engineering in the United States. The report includes a chapter on public understanding of and attitudes toward science and technology. Science and Engineering Indicators is used extensively by officials and researchers in government, education, industry, and professional and nonprofit associations both in the United States and abroad.

In addition, NSF's Office of Legislative and Public Affairs uses the information from this data collection in preparing speeches and testimony for NSF executives. The information is also used in NSF's Annual Report and in various publications prepared by NSF's Division of Science Resources Statistics.

Respondents: Individuals.

Estimated Number of Respondents: 2000.

Burden on the Public: NSF will add questions averaging 15 minutes of survey time to 2000 interviews to be conducted as part of the survey of Consumer Attitudes. This computes to 500 public burden hours in 2004.

Frequency of Responses: NSF collects data on public attitudes and understanding occasionally, at approximately two to three year intervals.

Comments: Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: November 6, 2003.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03–28392 Filed 11–12–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254, 50–265]

Exelon Generation Company, LLC, Quad Cities Nuclear Power Station, Units 1 and 2; Notice of Availability of Draft Supplement 16 to Generic Environmental Impact Statement and Public Meeting for the License Renewal of Quad Cities Nuclear Power Station, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–29 and DPR–30 for an additional 20 years of operation at Quad Cities Nuclear Power Station (QCNPS).

QCNPS is located in Rock Island County, Illinois, approximately 4 miles north of Cordova, Illinois. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft supplement to the GEIS is available for public inspection in the NRC's Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or, electronically, from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*. In addition, the Cordova District Library, 402 Main Avenue, Cordova, Illinois; the River Valley Library, 214 South Main Street, Port Byron, Illinois; and the Davenport Public Library, 321 Main Street, Davenport, Iowa, have agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by January 27, 2004. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *QuadCitiesEIS@nrc.gov.* All comments received by the Commission, including those made by Federal, State, and local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and from the PARS component of ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on December 16, 2003, at The Mark of the Quad Cities, 1201 River Drive, Moline, Illinois. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include: (1) a presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Louis L. Wheeler by telephone at 1–800–368–5642, extension 1444, or by e-mail at *dxw@nrc.gov* no later than December 10, 2003. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Wheeler's attention no later than December 10, 2003, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

For further information, contact: Mr. Louis L. Wheeler, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Mr. Wheeler may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 4th day of November, 2003.

For The Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–28411 Filed 11–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on November 19 and 20, 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 and Thursday, November 19–20, 2003—8:30 a.m. until the conclusion of business. The Subcommittee will discuss the ongoing development by the Office of Nuclear Regulatory Research of the TRAC/RELAP Advanced Computational Engine (TRACE). This is an advanced nuclear reactor thermal-hydraulic systems analysis computer code, which is intended to replace several other, more specialized reactor analytical tools. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff 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: 301–415–1813) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted during the meeting.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). 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: November 5, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–28414 Filed 11–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Solicitation of Public Comments on the Fourth Year of Implementation of the Reactor Oversight Process

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: Nearly 4 years have elapsed since the U.S. Nuclear Regulatory Commission (NRC) implemented its revised Reactor Oversight Process (ROP). The NRC is currently soliciting comments from members of the public, licensees, and interest groups related to the implementation of the ROP. This is a followup to the FRN issued in November 2002, which requested feedback on the third year of implementation.

DATES: The comment period expires on December 31, 2003. The NRC will consider comments received after this date if it is practical to do so, but is only able to ensure consideration of comments received on or before this date.

ADDRESSES: Comments may be e-mailed to *nrcrep@nrc.gov* or sent to Michael T. Lesar, Chief, Rules and Directives Branch, Office of Administration (Mail Stop T–6D59), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may also be hand-delivered to Mr. Lesar at 11554 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Documents created or received at the NRC after November 1, 1999, are available electronically through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html.* From this site, the public can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. For more information, contact the NRC's Public Document Room (PDR) reference staff at 301–415–4737 or 800–397–4209, or by e-mail at *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Maley, Office of Nuclear Reactor Regulation (Mail Stop OWFN 7A15), U.S. Nuclear Regulatory Commission, Washington DC 20555–0001. Mr. Maley can also be reached by telephone at 301–415–2919 or by e-mail at *mjm3@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Program Overview

The mission of the NRC is to regulate the civilian uses of nuclear materials in the United States to protect the health and safety of the public and the environment, and to promote the common defense and security by preventing the proliferation of nuclear material. This mission is accomplished through the following activities:

- License nuclear facilities and the possession, use, and disposal of nuclear materials.
- Develop and implement requirements governing licensed activities.
- Inspect and enforce licensee activities to ensure compliance with these requirements and the law.

While the NRC's responsibility is to monitor and regulate licensees' performance, the primary responsibility for safe operation and handling of nuclear materials rests with each licensee.

As the nuclear industry in the United States has matured for more than 26 years, the NRC and its licensees have learned much about how to safely operate nuclear facilities and handle nuclear materials. In April 2000, the NRC began to implement more effective and efficient inspection, assessment, and enforcement approaches, which apply insights from these years of regulatory oversight and nuclear facility operation. The NRC has also incorporated risk informed principles and techniques into its oversight activities. A risk informed approach to oversight enables the NRC to more appropriately apply its resources to oversight of operational areas that contribute most to safe operation at nuclear facilities.

After conducting a 6-month pilot program in 1999, assessing the results, and incorporating the lessons learned, the NRC began implementing the revised Reactor Oversight Process (ROP) at all 103 nuclear facilities (except D.C. Cook) on April 2, 2000. Inherent in the ROP are the following key NRC performance goals:

(1) Maintain safety by establishing and implementing a regulatory oversight process that ensures that plants are operated safely.

(2) Enhance public confidence by increasing the predictability, consistency, and objectivity of the oversight process; providing timely and understandable information; and providing opportunities for meaningful involvement by the public.

(3) Improve the effectiveness, efficiency, and realism of the oversight process by implementing a process of continuous improvement.

(4) Reduce unnecessary regulatory burden through the consistent application of the process and incorporation of lessons learned.

Key elements of the ROP include revised NRC inspection procedures, plant performance indicators, a significance determination process, and an assessment program that incorporates various risk-informed thresholds to help determine the level of NRC oversight and enforcement. Since process development began in 1998, the NRC has frequently communicated with the public by various means. These have included conducting public meetings in the vicinity of each licensed commercial nuclear power plant, issuing FRNs soliciting feedback on the process, publishing press releases about the new process, conducting multiple public workshops, placing pertinent background information in the NRC's Public Document Room, and establishing an NRC Web site containing easily accessible information about the new program and licensee performance.

NRC Public Stakeholder Comments

The NRC continues to be interested in receiving feedback from members of the public, various public stakeholders, and industry groups on their insights regarding the fourth year of implementation of the ROP. In particular, the NRC is seeking responses to the questions listed below, which will provide important information that the NRC can use in ongoing program improvement. A summary of the feedback obtained will be provided to the Commission and included in the annual ROP self-assessment report.

Questions

Questions Related to Specific ROP Program Areas

(As appropriate, please provide specific examples and suggestions for improvement.)

(1) Does the Performance Indicator Program minimize the potential for licensees to take actions that adversely impact plant safety?

(2) Does appropriate overlap exist between the Performance Indicator Program and the Inspection Program?

(3) Do reporting conflicts exist, or is there unnecessary overlap between reporting requirements of the ROP and those associated with the Institute of Nuclear Power Operations (INPO), the

World Association of Nuclear Operations (WANO), or the Maintenance Rule?

(4) Does NEI 99–02, ''Regulatory Assessment Performance Indicator Guideline'' provide clear guidance regarding Performance Indicators?

(5) Is the information in the inspection reports useful to you?

(6) Does the Significance Determination Process yield equivalent results for issues of similar significance in all ROP cornerstones?

(7) Does the NRC take appropriate actions to address performance issues for those licensees outside of the Licensee Response Column of the Action Matrix?

(8) Is the information contained in assessment reports relevant, useful, and written in plain English?

Questions Related to the Efficacy of the Overall Reactor Oversight Process (ROP)

(As appropriate, please provide specific examples and suggestions for improvement.)

(9) Are the ROP oversight activities predictable (*i.e.,* controlled by the process) and objective (*i.e.,* based on supported facts, rather than relying on subjecting judgement)?

(10) Is the ROP risk-informed, in that the NRC's actions are graduated on the basis of increased significance?

(11) Is the ROP understandable and are the processes, procedures and products clear and written in plain English?

(12) Does the ROP provide adequate assurance that plants are being operated and maintained safely?

(13) Does the ROP improve the efficiency, effectiveness, and realism of the regulatory process?

(14) Does the ROP enhance public confidence?

(15) Has the public been afforded adequate opportunity to participate in the ROP and to provide inputs and comments?

(16) Has the NRC been responsive to public inputs and comments on the ROP?

(17) Has the NRC implemented the ROP as defined by program documents?

(18) Does the ROP reduce unnecessary regulatory burden on licensees?

(19) Does the ROP result in unintended consequences?

(20) Would you benefit if the NRC conducted a ROP Public Workshop in the future?

(21) Please provide any additional information or comments on other program areas related to the Reactor Oversight Process.

Dated at Rockville, Maryland, this 5th day of November, 2003.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–28413 Filed 11–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement Regarding Revision to the Completion Time in STS 3.6.3, ''Containment Isolation Valves'' for Combustion Engineering Pressurized Water Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to changes to the completion time in Standard Technical Specifications (STS) 3.6.3 ''Containment Isolation Valves (Atmospheric and Dual).'' The proposed change to the Technical Specifications (TS) would extend to 7 days the completion time to isolate the affected penetration flow path when selected containment isolation valves (CIVs) are inoperable in either a penetration flow path with two CIVs or in a penetration flow path with one CIV in a closed system. This change is based on analyses provided in a generic topical report submitted by the former Combustion Engineering Owner's Group (CEOG; now incorporated into the Westinghouse Owners Group). The Owners Group participants in the Technical Specification Task Force (TSTF) proposed this change to the STS in Change Traveler TSTF–373, Revision 2. This notice also includes a model no significant hazards consideration (NSHC) determination relating to this matter.

The purpose of these models is to permit the NRC to efficiently process amendments to incorporate this change into plant-specific TS for Combustion Engineering (CE) pressurized water reactors (PWRs). Licensees of nuclear power reactors to which the models apply could request amendments conforming to the models. In such a request, a licensee should confirm the applicability of the SE and NSHC determination to its reactor. The NRC staff is requesting comments on the model SE and model NSHC determination before announcing their availability for referencing in license amendment applications.

DATES: The comment period expires on December 15, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at the NRC's Public Document Room, One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Comments may be submitted by electronic mail to *CLIIP@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: William Reckley, Mail Stop: O–7D1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1323.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The Consolidated Line Item Improvement Process (CLIIP) is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished by processing proposed changes to the STS in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice is soliciting comment on a proposed change to the STS that changes the containment isolation valve (CIV) completion times for the CE STS, NUREG–1432, Revision 2. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either

reconsider the change or proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TSs are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability would be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves an increase in the allowed completion times to isolate the affected penetration flow path when selected CIVs are inoperable at CE PWRs. The CEOG proposed this change for incorporation into the STS as TSTF–373, Revision 2. This change is based on the staff approved generic analyses contained in the CEOG Document CE NPSD–1168–A, ''Joint Applications Report for Containment Isolation Valve AOT Extension,'' dated January 2001, accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet (ADAMS Accession Number ML010780257) 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 Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Applicability

This proposed change to revise the TS completion times for selected CIVs is applicable to CE PWRs.

To efficiently process the incoming license amendment applications, the staff requests each licensee applying for the changes addressed by TSTF–373 using the CLIIP to address the plant-specific verifications identified in the model SE. Namely, each licensee should include in its application that it has verified that:

(a) The supporting information in CE NPSD–1168–A is applicable to their plant and the specific penetrations for which the licensee is requesting an extended completion time (*i.e.*, the specific penetrations are consistent with those analyzed per the risk guidelines of Regulatory Guide (RG) 1.177, ''An Approach for Plant-Specific, Risk-Informed Decision Making: Technical Specifications,'' and fall within the 14 containment penetration configurations in the report).

(b) They have evaluated and substantiated that external events will not affect the results of the analysis supporting the extended completion times.

(c) Any plant-specific analyses used to support the amendment request have used an acceptable probabilistic risk analyses (PRA) quality as described in RG 1.177.

(d) Plant-specific implementation of this change includes verification of the operability of the remaining CIV(s) in a penetration flow path before entering the extended completion time for corrective maintenance. Plant-specific implementation of this change includes verification that the affected penetration will remain physically intact or be isolated so as to not permit a release to the outside environment.

(e) They have verified that the additive nature of multiple failed CIVs and the possibility of entering multiple allowed outage times (AOTs) have been addressed as part of the analysis.

(f) Applications that propose changes for configurations not addressed by the groups described in CE NPSD–1168–A include a plant-specific analysis to justify the completion time extension. [Note that such proposals will require staff review of the specific penetrations and related justifications for the proposed extension in completion times.]

The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested verifications. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. Following the staff's evaluation of comments received as a result of this notice, the staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the SE or proposed NSHC determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The staff will in turn issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed NSHC determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the revised requirements for each plant that applies for and receives the requested change.

Proposed Safety Evaluation

Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Consolidated Line Item Improvement.

Technical Specification Task Force (TSTF) Change TSTF–373, ''Increase CIV Completion Time in Accordance with CE–NPSD–1168''.

1.0 Introduction

By application dated [ ], [Licensee] (the licensee) requested changes to the Technical Specifications (TS) for [facility]. The proposed changes would revise TS 3.6.3, ''Containment Isolation Valves (Atmospheric and Dual),'' by extending to 7 days the completion time to isolate the affected penetration flow path when selected containment isolation valves (CIVs) are inoperable in either a penetration flow path with two CIVs or in a penetration flow path with one CIV in a closed system.

2.0 Regulatory Evaluation

The existing Limiting Condition for Operation (LCO) 3.6.3, requires that each CIV be operable. The operability of CIVs ensures that the containment is isolated during a design basis accident and is able to perform its function as a barrier to the release of radioactive material. If a CIV is inoperable in one or more penetrations, the current required action is to isolate the penetration or restore the inoperable CIV to operable status within 4 hours for penetrations with 2 CIVs and within 72 hours for penetrations with a single CIV and a closed system. The times specified for performing these actions were considered reasonable, given the time required to isolate the penetration and the relative importance of ensuring containment integrity during plant operation. In the case of a single CIV and a closed system, the specified completion time takes into consideration the ability of the closed system to act as a penetration boundary.

In June 1999, the Combustion Engineering (CE) Owners Group (CEOG) submitted the joint application report (JAR) CE NPSD–1168 which provided a risk-informed justification for extending the TS allowed outage time (AOT) (also referred to as completion time), for an inoperable CIV from the current 4 hours or 72 hours to 7 days. The staff used the guidance of Regulatory Guide (RG) 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-

Informed Decisions on Plant-Specific Changes to the Current Licensing Basis, 1998,'' and RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decision Making: Technical Specifications, 1998,'' in performing its review of this topical report. RG 1.177 provides a three-tiered approach to evaluate the risks associated with proposed license amendments. The first tier evaluates the probabilistic risk assessment (PRA) model and the impacts of the changes on plant operational risk. The second tier addresses the need to preclude potentially high risk configurations, should additional equipment outages occur during the AOT. The third tier evaluates the licensee's configuration risk management program (CRMP) to ensure that the removal of equipment from service immediately prior to or during the proposed AOT will be appropriately assessed from a risk perspective. RG 1.174 provided the guidelines to determine the risk level associated with the proposed change. The staff's safety evaluation (SE) dated June 16, 2000, concluded that, based on the use of bounding risk parameters for CE-designed plants, the proposed increase in the CIV AOT from 4 hours (2 or more CIVs) or 72 hours (single CIV and closed system) to 7 days does not result in an unacceptable incremental conditional core damage probability (ICCDP) or incremental conditional large early release probability (ICLERP), according to the criteria of RG 1.177, provided that certain conditions specified in the staff SE were acceptably addressed by individual licensees referencing the JAR in plant-specific submittals.

The staff's SE associated with NPSD–1168 was issued prior to the changes associated with 10 CFR 50.65(a)(4), which became effective on November 28, 2002. With the implementation of 10 CFR 50.65(a)(4), licensees are required to assess and manage the risk that may result from proposed maintenance activities. The activities necessary for implementation of 10 CFR 50.65(a)(4) satisfy and supercede a number of the conditions in the staff SE for implementing the JAR.

The approval of TSTF–373, Revision 2, followed the staff's review of CE NPSD–1168 and specified the applicable conditions to be addressed in order to implement the 7-day completion time for an inoperable CIV. These conditions are as follows:

(a) The supporting information in CE NPSD–1168–A is applicable to their plant and the specific penetrations for which the licensee is requesting an extended completion time (*i.e.*, the specific penetrations are consistent with those analyzed per the risk guidelines of Regulatory Guide (RG) 1.177, ''An Approach for Plant-Specific, Risk-Informed Decision Making: Technical Specifications,'' and fall within the 14 containment penetration configurations in the report).

(b) They have evaluated and substantiated that external events will not affect the results of the analysis supporting the extended completion times.

(c) Any plant-specific analyses used to support the amendment request have used an acceptable probabilistic risk analyses (PRA) quality as described in RG 1.177.

(d) Plant specific implementation of this change includes verification of the operability of the remaining CIV(s) in a penetration flow path before entering the extended completion time for corrective maintenance. Plant specific implementation of this change includes verification that the affected penetration will remain physically intact or be isolated so as to not permit a release to the outside environment.

(e) They have verified that the additive nature of multiple failed CIVs and the possibility of entering multiple allowed outage times (AOTs) have been addressed as part of the analysis.

(f) Applications that propose changes for configurations not addressed by the groups described in CE NPSD–1168–A include a plant-specific analysis to justify the completion time extension. [Note that such proposals will require staff review of the specific penetrations and related justifications for the proposed extension in completion times.]

3.0 Technical Evaluation

3.1 Statement of Proposed Changes

The proposed changes to TS 3.6.3 include:

1. The existing Condition A, with related required action and completion time, is replaced by new Conditions A and B. The new Condition A retains the required actions and completion times of existing Required Action A; however, the new Condition A is applicable to the containment sump supply valves to the ECCS and containment spray pumps, and those penetrations that do not meet the related criteria and analyses contained in CE NPSD–1168–A. The new Required Action B retains the required actions of existing Required Action A and the completion times for existing Required Action A.2. New Condition B is the same as existing Condition A, except that it does not apply to Conditions A, E, and F. In addition, the completion time for Required Action B.1 is 7 days.

2. Existing Required Action C is relabeled Required Action D and the completion time for Required Action C.1 (new D.1) is changed from ''72 hours'' to ''72 hours for those penetrations that do not meet the 7-day criteria *and* 7 days for those penetrations that meet the 7-day criteria.''

3. Existing Required Actions B, D, E, and F and references to those Actions in the specification are relabeled C, E, F, and G respectively.

3.2 Evaluation of Proposed Changes

The CIV penetration configurations may be categorized into three groups. These groups are:

1. CIV penetration configurations that were not analyzed in the JAR and in the plant specific analysis;

2. CIV penetration configurations that fall within the 14 containment penetration configurations considered in the JAR; and

3. CIV penetration configurations that were not considered in the JAR but a plant specific analysis was provided to justify a 7 day completion time.

The CIVs for which no analysis was provided include the containment sump supply valves to the ECCS and containment spray pumps, valves associated with the Main Feedwater System, Main Steam Isolation Valves, and [list of plant specific valves]. For these CIVs, the completion times for an inoperable valve will not change. Thus, either the 4 hour completion time of Required Action A.1 or the 72 hour completion time for Required Action D.1 will apply, depending on whether the penetration has two valves or has a single CIV within a closed system.

For those CIV penetration configurations that fall within the 14 containment penetration configurations considered in the JAR, the licensee verified that the JAR results were applicable to [plant name]. [The analysis also evaluated the risk for those CIV penetration configurations that were not considered in the JAR. The risk measures used to assess the impact of the proposed changes for these configurations in this analysis are consistent with the measures defined in RGs 1.174 and 1.177. This analysis also took into consideration plant-specific external events to show how they would affect the results of the analysis supporting the extended completion times.]

In addition, the licensee verified that the additive nature of multiple failed CIVs, and the possibility of entering multiple AOTs, had been addressed as

part of the analysis. The results demonstrated that these situations resulted in risk consistent with the ICCDP and ICLERP guidelines of RG 1.177, so that defense-in-depth for the safety systems is maintained. The analysis demonstrated that there would be no impact from any of the above considerations, and that the ICCDP and ICLERP for [plant name] are well within the RG 1.1.77 guidelines of 5.0 E–7 and 5.0 E–8, respectively. The staff finds that, from the analysis perspective, the increase in the completion times from 4 hours (2 CIVs) or 72 hours (single CIV and closed system) to 7 days is justified.

The JAR and the plant-specific analysis assumed that the penetrations remain physically intact so that their integrity is maintained. In instances where corrective or preventive maintenance activities would be performed on penetrations and CIVs while in modes requiring these valves to be operable, the licensee has confirmed that these activities will be monitored to ensure that the integrity of the penetration is not compromised during the maintenance. The licensee has stated that the operability of the remaining CIV(s) in a penetration flow path will be verified before entering the extended completion time for corrective maintenance and that measures will be taken to ensure that each penetration will remain physically intact or be isolated so as to not permit a release to the outside environment. The staff has reviewed the licensee's statements regarding its measures to ensure penetration integrity is maintained and finds them acceptable.

Based on the low probability of an event occurring during the inoperability of a CIV and the ability to maintain the integrity of the CIV penetration, the staff finds the proposed changes are consistent with previous staff reviews of CE NPSD–1168–A and TSTF–373, and are acceptable.

4.0 State Consultation

In accordance with the Commission's regulations, the [State] State official was notified of the proposed issuance of the amendments. The State official had [choose one: (1) no comments, or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendment changes a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards consideration, and there has been no public comment on such finding (XX FR XXXXX). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that: (1) There is reasonable assurance that the health and safety of the public will not be endangered by the 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.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendment extends the completion time for penetration flow paths with one valve inoperable from 4 hours or 72 hours to 7 days. The change is applicable to both penetrations with two containment isolation valves and with one containment isolation valve in a closed system. This change is not applicable to the containment sump supply valves to the emergency core cooling system and containment spray pumps.

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. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change revises the completion time (CT) for an inoperable containment isolation valve (CIV) within the scope of the Combustion Engineering (CE) Owner's Group (CEOG) Joint Application Report CE–NPSD–1168–A from 4 hours or 72 hours to 7 days. CIVs are not accident initiators in any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased.

CIVs, individually and in combination, control the extent of leakage from the containment following an accident. The proposed CT extension applies to the reduction in redundancy in the containment isolation function by the CIVs for a limited period of time but does not alter the ability of the plant to meet the overall containment leakage requirements. In order to evaluate the proposed CT extension, a probabilistic risk assessment evaluation was performed in the CEOG Joint Application Report CE–NPSD–1168–A. The risk assessment concluded that, based on the use of bounding risk parameters for the CE designed plants, the proposed increase in the CIV CT from 4 hours to 7 days does not alter the ability of the plant to meet the overall containment leakage requirements. It also concluded that the proposed change does not result in an unacceptable incremental conditional core damage probability or incremental conditional large early release probability according to the guidelines of Regulatory Guide (RG) 1.177. As a result, there would be no significant increase in the consequences 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. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change revises the allowed outage time for an inoperable CIV within the scope of the CEOG Joint Application Report CE–NPSD–1168–A from 4 hours or 72 hours to 7 days. CIVs, individually and in combination, control the extent of leakage from the containment following an accident. The proposed CT extension applies to the reduction in redundancy in the containment isolation function by the CIVs for a limited period of time but does not alter the ability of the plant to meet the overall containment leakage requirements. The proposed change does not change the design, configuration, or method of operation of the plant. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment

will be installed). 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 does not involve a significant reduction in a margin of safety. The proposed change revises the CT for an inoperable CIV within the scope of the CEOG Joint Application Report CE–NPSD–1168–A from 4 hours or 72 hours to 7 days. CIVs, individually and in combination, control the extent of leakage from the containment following an accident. The proposed CT extension applies to the reduction in redundancy in the containment isolation function by the CIVs for a limited period of time but does not alter the ability of the plant to meet the overall containment leakage requirements. In order to evaluate the proposed CT extension, a probabilistic risk assessment evaluation was performed in CEOG Joint Application Report CE–NPSD–1168–A. The risk assessment concluded that, based on the use of bounding risk parameters for CE-designed plants, the proposed increase in the CIV CT from 4 hours or 72 hours to 7 days does not alter the ability of the plant to meet the overall containment leakage requirements. It also concluded that the proposed change does not result in an unacceptable incremental conditional core damage probability or incremental conditional large early release probability according to the guidelines of RG 1.177. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the proposed change 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.

Dated at Rockville, Maryland, this 5th day of November, 2003.

For The Nuclear Regulatory Commission.

Herbert N. Berkow, Director,

Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–28412 Filed 11–12–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48750; File No. SR–CBOE–2003–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Make Changes to Its Fee Schedule To Amend Certain Application Fees

November 6, 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 November 3, 2003, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 CBOE proposes to make changes to its Fee Schedule to amend certain application fees. The text of the proposed rule change to the fee schedule is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, Proposed Rule Change

1. Purpose

The CBOE proposes to make the following amendments to its Fee Schedule concerning its application fees, as described below.

First, the application fee for a new joint account is currently $250 per person (with a minimum of $500). The Exchange states that this fee has not increased for many years,[3] and now proposes to move to a flat fee of $1,000 for all new joint account applications.

Second, the Exchange currently charges $250 whenever a member organization requests an addition of a member to a joint account. The Exchange proposes a change to eliminate this fee for participant additions to joint accounts whose members are part of the same broker-dealer. The Exchange states that the vast majority of additions to joint accounts are currently for joint accounts whose members are part of the same broker-dealer. Recent revisions in the joint application account form have significantly reduced the time and effort that the Exchange staff must expend in processing such changes. In cases where the members of a joint account are not part of the same broker-dealer, the $250 fee would continue to be imposed for each addition to the joint account.

Finally, the Exchange proposes to establish a $10,000 cap on application fees that are incurred due to a member organization's change in its organizational structure (*e.g.*, when a limited partnership restructures itself as a limited liability corporation). The Exchange believes that this cap would still allow the CBOE to recover its processing costs occasioned by such structural changes, while also mitigating the fee impact upon member organizations who find themselves required to enact such changes in their structure.

The Exchange believes that these changes would help continue to fairly allocate its costs for processing changes in joint accounts while also passing along to members the savings from increased efficiencies that the Exchange has recently achieved in this area.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the CBOE members.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 14197 (Nov. 22, 1977), 42 FR 61097 (Dec. 1, 1977) (approving SR–CBOE–77–26, which established the $250 joint account application fee).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

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 purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 CBOE. All submissions should refer to File No. SR–CBOE–2003–52 and should be submitted by December 4, 2003.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–28393 Filed 11–12–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48764; File No. SR–NYSE–2003–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Amendment and Restatement of the Constitution of the Exchange To Reform the Governance and Management Architecture of the Exchange

November 7, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, (the ''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 7, 2003, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is amending and restating the Constitution of the Exchange. The changes to the Constitution will significantly reform the governance and management architecture of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend and restate its Constitution to significantly change and enhance its governance structure. The amended and restated Constitution, marked to show changes from the Exchange's existing Constitution, is included in Exhibit A hereto.

The objectives of the new governance architecture are to

(1) Place responsibility for governance, compensation and internal controls, as well as for supervision of regulation, in the hands of a Board of Directors that is independent both from NYSE management and from the members, member organizations and listed companies.

(2) Separately preserve the existing engagement of the broker-dealer community and listed company community with the NYSE by creating a Board of Executives that will also include the executives of major public and private ''buy-side'' entities as well as lessor members of the Exchange.

Thus, the proposed rule change calls for a Board of Directors that is completely independent except for the CEO. Requiring independence from owner-constituents goes beyond what we expect of public companies, and it aligns the Exchange's Board with the interests of investors. It is the additional Board of Executives that is intended to ensure ongoing engagement with all of our constituents. Moreover, the Regulatory unit reports directly—and not through the CEO—to our independent Board of Directors, yet retains sufficient proximity to the marketplace to assure the market sensitivity that the Exchange believes is fundamental to effective regulation of the capital markets.

The Exchange notes that its current investigation of specialist trading practices, and the Commission's parallel investigation regarding our surveillance for and enforcement of the affected rules, have caused commentators to call for changes that would end broker dealer self-regulation through exchanges as well as radically alter the auction market. The Exchange also notes that, while the preliminary findings of the internal review of its compensation practices and the preliminary findings of the Commission's inspection and investigation of our specialist regulation have informed our new architecture, neither of these processes are complete and, therefore, the Exchange cannot be

certain that further changes in our architecture may not be warranted. In this regard, the Exchange notes that under the amended and restated Constitution the new Board will, for the first time, have authority concurrent with our member owners to change specific provisions pertaining to our governance architecture, which means that further changes can be effected in those provisions without another membership vote.

The Exchange believes that its new architecture empowers a Board of Directors with the independence to address issues objectively and the constituent input to address them intelligently. The Exchange believes that directors who have the degree of independence and experience that our governance architecture promises—as evidenced by the quality of our nominees—will assure that the Exchange's regulatory function is both independent and robust. Thus, the Exchange believes its architecture guarantees the independence of our regulatory function both from members and member organizations and from inappropriate linkage with our marketplace function, while assuring the function's sensitivity to the market.

Nevertheless, the Exchange notes that this proposed rule change does not ask the Commission to approve either the continuation of self-regulation in the United States or the continuation of the role of the specialist on the Exchange. Both issues should be addressed in the context of how well the new Board implements both the architecture and the programmatic changes that the Exchange has undertaken in response to the Commission (as well as other programmatic changes that the Board can be expected to initiate), all of which the Commission is carefully monitoring through the ongoing engagement of its market regulation, inspection and enforcement staffs with these matters.

Thus, while the Exchange does seek the Commission's approval of what it regards as a greatly improved architecture for self-regulation through the Exchange, and while the Exchange continues to believe that its specialist/auction market delivers high quality executions at low cost to investors, it does not at this time seek the Commission's premature decisions on this work-in-progress. Nor does the Exchange seek from the Commission at this time any action on the question of the separation of the trading rights from equity ownership, and thereby on the question of who should elect the Exchange Board over the longer term, which has far too many ramifications to be the subject of proposal by an interim chairman. That issue, and the other issues described in the proxy statement that go beyond board and management architecture, must be taken up by an unconflicted Board in a way that takes into account the many public policy and practical issues that such a separation implies.

All the Exchange seeks at this time is the Commission's approval of a transitional structure that allows it to move from the current situation to one in which a Board of independent, distinguished and experienced men and women can take on the formidable challenges facing the Exchange.

A complete explanation of the purposes and details of the new architecture, and the reasons why the Exchange is desirous of making these changes, is contained in the proxy statement and related materials which have been furnished to the Exchange's membership in connection with the upcoming membership vote on the proposal. All of these materials are contained in Exhibit B hereto. Also contained in the proxy statement are the names of the eight persons whom the members are being asked to vote to elect as the new Board of Directors of the Exchange.

Clarifying changes to certain Constitutional provisions which will be added by Board action promptly following member approval of the amended and restated Constitution and election of the new Board are described in a supplementary letter contained in Exhibit C hereto. Upon approval by the Board, the additional changes to the Constitution will be filed with the Commission for approval.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(1) [3] that an exchange be organized and have the capacity to be able to carry out the purposes of the Exchange Act, the requirement under section 6(b)(3) [4] that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors, and the requirement under section 6(b)(5)[5] 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 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The amended and restated Constitution is subject to the approval of the members of the Exchange, and a vote is currently scheduled for November 18, 2003. The Exchange hereby consents to an extension of the period of time specified in section 19(b)(2) of the Act [6] until at least thirty-five days after the Exchange files an appropriate amendment to this filing setting forth the completion of all additional action required under the Certificate of Incorporation, Constitution and rules of the Exchange with respect to this proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements

[3] 15 U.S.C. 78f(b)(1).

[4] 15 U.S.C. 78f(b)(3).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

with respect to the proposed rule change filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2003–34 and should be submitted by December 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[7]

Jonathan G. Katz,

Secretary.

Exhibit A.—Text of the Proposed Rule Change (Changes are italicized; deleted material is in brackets)

New York Stock Exchange, Inc.

CONSTITUTION

Article I

Title—Objects—Definitions

Sec. 1. *Title.* The title of the corporation is the ''New York Stock Exchange, Inc.''

Sec. 2. *Objects and Purposes.* Its objects and purposes shall be:

(a) To furnish exchange rooms for the convenient transaction of their business by its members; to furnish other facilities for its members, allied members and member organizations; to maintain high standards of commercial honor and integrity among its members, allied members and member organizations; and to promote and inculcate just and equitable principles of trade and business;

(b) to conduct and carry on the functions of a ''board of trade'' within the meaning of that term in the New York Not-for-Profit Corporation Law;

(c) to conduct and carry on the functions of an ''exchange'' within the meaning of that term in the Act; and

(d) to conduct and carry on any and all activities incidental to the foregoing which may lawfully be conducted and carried on by a corporation of its type formed under the New York Not-for-Profit Corporation Law.

Sec. 3. *Definition of Terms.* Unless the context requires otherwise, the terms defined in this Section shall, for all purposes of this Constitution, have the meanings herein specified:

(a) The term ''Act'' means the Securities Exchange Act of 1934 and the rules and regulations thereunder, as from time to time amended.

(b) The term ''Exchange'' means the New York Stock Exchange, Inc.

Membership

(c) The term ''allied member'' means:

(i) a general partner in a member firm, or an employee who controls a member firm, who is not a member of the Exchange and who has become an allied member as provided in the rules of the Exchange, or

(ii) an employee of a member corporation who is not a member of the Exchange, who has become an allied member as provided in the rules of the Exchange, and who is either:

—a principal executive officer of such corporation, or

—a person who controls such corporation.

(d) The term ''approved person'' means a person who is not a member or an allied member of the Exchange or an employee of a member organization, who has become an approved person as provided in the rules of the Exchange and who is either:

(i) a person who controls a member or member organization, or

(ii) a person engaged in a securities or kindred business who is controlled by or under common control with a member or member organization.

(e) The term ''electronic access member'' means one of the members who has the right to maintain electronic or telephonic access to the floor facilities of a member or member organization, the Designated Order Turnaround System of the Exchange and such other automated trading systems of the Exchange as the Board may determine.

(f) The term ''lessee member'' means a member who has become a member by leasing the membership of a regular member.

(g) The term ''lessor member'' means regular member who has leased his or her membership.

(h) The term ''member'' means a natural person who is a member of the Exchange. A member may be associated as a member with no more than one member organization.

(i) The term ''member corporation'' means a corporation *or other limited liability entity,* registered as a broker or dealer in securities under, unless exempted by, the Act, approved by the Board as a member corporation, at least one of whose officers or employees is a member of the Exchange, or which has the status of a member corporation by virtue of permission given to it pursuant to the rules of the Exchange.

(j) The term ''member firm'' means a partnership, registered as a broker or dealer in securities under, unless exempted by, the Act, approved by the Board as a member firm, at least one of whose general partners or employees is a member of the Exchange, or which has the status of a member firm by virtue of permission given to it pursuant to the rules of the Exchange.

(k) The term ''member organization'' includes ''member firm'' and ''member corporation.''

(l) The term ''membership'' refers to the members of the Exchange.

(m) The term ''physical access member'' means one of the members who is not a regular member but has the right to enter physically upon the trading floor and to have facilities thereon for the execution of orders.

(n) The term ''regular member'' means one of the members who upon liquidation, dissolution or winding up of the affairs of the Exchange, has distributive rights in its assets.

Board and Board of Executives

(o) The term ''Board'' means the Board of Directors of the Exchange.

(p) The term ''entire Board'' means the total number of directors [which] *that* the [Exchange] *Board* would have if there were no vacancies, [other than any vacancy that may exist in the office of Executive Vice Chairman or President, or both] *on the Board.*

[(q) The term ''industry director'' means a director of the Exchange who is

(i) a member or allied member of the Exchange who is

—the chief executive officer, or a principal executive officer, and a director of a member corporation; or

—the general partner of a member firm who has primary executive responsibilities; or

(ii) a member of the Exchange who is not a holder of voting stock in any member corporation or a partner in any member firm; or

(iii) the chief executive officer, or a principal executive officer, and a director of a person which controls and has as its principal subsidiary a member corporation.]

(q) The term ''Board of Executives'' means the Board of Executives of the Exchange described in Article V of this Constitution.

[(r) The term ''public director'' means a director of the exchange who is a representative of the public, except that no person who is or is affiliated with a broker or dealer in securities shall be a public director. For the purposes of this definition, a person shall be considered to be affiliated with a broker or dealer in securities if such person is a partner, officer, employee or director of such

[7] 17 CFR 200.30–3(a)(12).

broker or dealer, or controls such broker or dealer, or is an officer or employee of a person, one of the significant subsidiaries of which is such broker or dealer. No person who is an employee of an issuer of securities that are admitted to dealings upon the Exchange shall be a public director, unless such person is the chief executive officer or a principal executive officer of such issuer at the time of his or her first election to the Board as a public director.]

(r) The term ''entire Board of Executives'' means the total number of members that the Board of Executives would have if there were no vacancies on the Board of Executives.

Other terms used in this Constitution may be defined by rules adopted by the affirmative vote of a majority of the entire Board.

Article II

Membership

Sec. 1. *Regular Members, Electronic Access Members, Physical Access Members.* Subject to Section 2 of this Article, the membership of the Exchange shall consist of:

(a) 1366 regular members, each of whom shall, upon liquidation, dissolution, or winding up of the affairs of the Exchange, have distributive rights in its assets; and

(b) such number of physical access members, not to exceed twenty-four (24), each of whom shall have paid an annual membership fee, which shall entitle such member, during the period for which such fee has been paid and while such member remains in good standing, to enter physically upon the trading floor and to have facilities thereon for the execution of orders; and

(c) such number of electronic access members as the Board may from time to time determine, each of whom shall have paid an annual membership fee, which shall entitle such member, during the period for which such fee has been paid and while such member remains in good standing, to maintain electronic or telephonic access to (i) the floor facilities of a member or member organization, and (ii) the Designated Order Turnaround System of the Exchange, and (iii) such other automated trading systems of the Exchange as the Board may from time to time determine.

None of the members described in subsections (b) or (c) of this Section shall have any interest in or any right to share in any distribution of the assets of the Exchange in the event of any liquidation, dissolution, or winding up of the affairs of the Exchange.

Sec. 2. *Lessee Members.* A regular member in good standing may lease his or her membership to a person approved by the Exchange subject to and in accordance with such rules as may be adopted from time to time by the Board. During the term of such lease, for the purposes of this Constitution and the rules hereunder, the lessee shall be considered to be, and the lessor shall not be considered to be, a member of the Exchange, except that the lessor, and not the lessee, shall be deemed to be the member for the purposes of the Gratuity Fund, and shall be entitled to receive, with respect to such membership, any distribution of the assets of the Exchange in the event of any liquidation, dissolution, or winding up of the affairs of the Exchange. Under the lease agreement the lessor may retain the right to vote the leased membership or that right may pass to the lessee.

Sec. 3. *Approval of Members.* To become a member, or to be reinstated or readmitted as a member, a person must be approved by the Board.

Sec. 4. *Fee Payable by New Members.* Each person (hereinafter referred to as a ''new member''), upon becoming a regular member, shall pay to the Exchange a fee which shall be determined as follows:

(a) in the event that the new member shall have purchased such membership through a membership auction facility furnished by the Exchange, then the fee shall be the lesser of $7,500 or such amount as shall be equal to ten percent of the purchase price paid for the membership;

(b) in the event that:

(i) a regular member (hereinafter referred to as ''outgoing member'') whose membership shall be transferred to a new member shall have had a contractual obligation to transfer the membership to such person as may be designated by the member organization of which the outgoing member then shall be a partner or an officer or employee, and

(ii) said contractual obligation shall have been entered into at the same time as the outgoing member shall have acquired said membership, and

(iii) the Exchange at the time said contractual obligation shall have been entered into shall have in writing approved or consented to the entering into of said obligation, and

(iv) the membership of the outgoing member shall in satisfaction of such obligation be transferred to the new member pursuant to such a designation, and the new member shall have substantially the same relationship to and financial interest in the member organization as the outgoing member had, and

(v) the new member shall have a contractual obligation to the same member organization to transfer the membership of the new member to such person as may be designated by the member organization, which obligation shall be upon substantially the same terms and conditions of said contractual obligation of the outgoing member to the member organization,

then the fee shall be lesser of $7,500 or such amount as shall be equal to five percent of the purchase price at which the most recent contractual sale of a membership occurred through the auction facility prior to the date on which notice of the transfer shall have been posted; and

(c) in the event that the membership of a new member shall have been acquired in a manner other than as contemplated in either subsection (a) or subsection (b) of this Section, then the fee shall be the lesser of $7,500 or such amount as shall be equal to ten percent of the purchase price at which the most recent contracted sale of a membership occurred through the auction facility prior to the date on which notice of the transfer shall have been posted.

Notwithstanding the foregoing provisions of this Section, the Board may by rule eliminate the fee payable by a new member or reduce such fee below the minimum otherwise provided in this Section. The Board may also by rule require the payment of a fee upon the commencement or termination, or both, of any lease of membership referred to in Section 2 of this Article.

Sec. 5. *Signing Constitution.* No person admitted to membership shall be entitled to any privileges thereof until such member shall have signed the Constitution of the Exchange. By such signature such member pledges to abide by the same as the same has been or shall be from time to time amended, and by all rules adopted pursuant to this Constitution.

Sec. 6. *Use of Exchange Facilities.* The Exchange shall not be liable for any damages sustained by a member, allied member or member organization growing out of the use or enjoyment by such member, allied member or member organization of the facilities afforded by the Exchange, except as provided in the rules.

Sec. 7. *Alternates on Floor.* The Board may, by the affirmative vote of a majority of the entire Board, extend to a member who [is a director, who is an officer of one of the affiliated companies of the Exchange] *serves on the Board of Executives* or who, in time of national

emergency is on active duty in the armed forces of the United States or an ally of the United States or is engaged in public service incident to the national defense, the privilege of designating an alternate who shall have the power to transact in the place and stead of such member the usual business of such member on the floor of the Exchange, under such conditions and to such extent as the Board may prescribe, but only at such times as such [director or officer] *member* is prevented from transacting his or her usual business on the floor by the duties imposed by virtue of acting as such [director or officer] *member of the Board of Executives* or by the national emergency. If such member is a general partner or employee of a member firm, such member and the general partners of such firm may designate as such alternate a person approved by the Board. If such member is an officer or employee of a member corporation, such member and the directors of such member corporation may designate as such alternate a person approved by the Board. Every contract made on the floor by an alternate shall have the same force and effect as if it had been made by the member for whom such alternate is acting; and a member for whom an alternate is acting shall be liable to the same discipline and penalties for any act or omission of such alternate as for such member's own personal act or omission.

A majority of the entire Board may withdraw such privilege for any cause or without cause.

Sec. 8. *Options Trading Rights.* A regular member or lessor member may lease or transfer the right of entering physically upon the trading floor for the purpose of effecting transactions in options that are from time to time admitted to dealings on the Exchange (the ''options trading right'') to any person approved by the Exchange, provided that such lessor or transferor has not previously leased or transferred such right. The lessee or transferee of such right (the ''options trading right holder'') shall not, by virtue of such lease or transfer, be a member of the Exchange for any purpose of this Constitution or rules of the Board, but may maintain facilities on the trading floor for the execution of orders to buy and sell options that are from time to time admitted to dealings on the Exchange (''Exchange options'').

An options trading right holder who has acquired an options trading right by transfer may lease or transfer such right to any person approved by the Exchange.

A regular member or lessor member who has leased or transferred the options trading right relating to his or her membership shall not, during the term of such lease or after such transfer, exercise such right. If a regular member transfers the options trading right relating to his or her membership and thereafter transfers such membership unaccompanied by an options trading right, the transferee shall not, as a result of such transfer, acquire an options trading right. A regular member who has transferred the options trading right relating to his or her membership, or who has acquired by transfer such a membership which does not include an options trading right, may, if approved by the Exchange, acquire an options trading right and may thereafter lease or transfer such right, either together with or apart from his or her membership.

Except as expressly provided in the lease agreement between a lessor member and a lessee member, the options trading right relating to such membership shall remain with the lessor member.

The Board may, by the affirmative vote of a majority of the entire Board, adopt, amend and repeal such rules as it may deem necessary or proper relating to options trading right holders, the approval and disapproval thereof, the transfer or lease of options trading rights, the regulation of the activities and business associations of, and the conduct of business by, options trading right holders and brokers and dealers with which they are associated as partners, officers or employees, the imposition of charges with respect to, and the discipline of, options trading right holders and such brokers and dealers, and such other similar matters as the Board shall deem appropriate.

[Sec. 9. Temporary Options Trading Rights. The Board may at any time and from time to time and subject to such rules as the Board may from time to time adopt, issue options trading rights to any one or more or all persons that are members in good standing of any national securities exchange registered with the Securities and Exchange Commission or contract market designated as such by the Commodity Futures Trading Commission, which exchange or market is located in the United States of America; provided, however, that no such options trading right so issued to any person that is a member of the New York Futures Exchange, Inc. shall continue to confer any right beyond the third anniversary of the commencement of trading on the Exchange of any Exchange option and no other such options trading right so issued to any other person shall continue to confer any right beyond the first anniversary of such commencement. Any person to which any one or more options trading rights are issued pursuant to this Section shall be included within the term ''options trading right holders'' but no such options trading right so issued may be leased or transferred by the person to which issued. Notwithstanding the foregoing, any person to which any option trading right is issued pursuant to this Section, other than a natural person, may designate as the nominee of such person a natural person who is approved by the Exchange to exercise the right conferred by such option trading right and may change such designation from time to time, subject to the approval of the Exchange.]

Sec. 9. (*Reserved*).

Sec. 10. Transfer and Lease of Regular Membership. A transfer of membership of a regular member and the lease (which shall not be considered a transfer) of such a membership may be made upon the approval of the transfer or lease by the Board. The membership of a physical access member, electronic access member or lessee member shall not be transferable. The Board may, by the affirmative vote of a majority of the entire Board, adopt, amend and repeal such rules as it may deem necessary or proper relating to the posting of notice of the proposed transfer or lease of a membership, the right of a member to make contracts on the Exchange after such posting, the procedures to be followed with respect to such transfer or lease, the status of open Exchange Contracts of a member who transfers or leases his or her membership and of his or her member organization, and other similar matters.

Sec. 11. Distribution of Transfer Proceeds. Upon any transfer of a membership, whether made by a member or his or her legal representative or by the Board, the proceeds thereof shall be applied by the Exchange to the following purposes and in the following order of priority, viz:

First. The payment of such sums as the Board shall determine are or may become due to the Exchange from the member whose membership is transferred or from a member organization with which such member is associated as a member.

Second. The payment of such sums as the Board shall determine are due by such member or such member organization to other members or member organizations as a result of losses arising directly from the closing out under this Constitution and rules adopted pursuant hereto (or, to the extent made applicable by such rules,

under the rules of The Options Clearing Corporation) of contracts entered into in the ordinary course of business on the Exchange for the purchase, sale, borrowing or loaning of securities.

There shall not be allowed as entitled to priority in payment under this subsection any claim otherwise allowable under the foregoing paragraph, with respect to which the claimant, in the opinion of the Board, did not take promptly all other proper steps under this Constitution, the rules adopted pursuant hereto and practice of the Exchange to protect his or her rights and to enforce such claim when due.

No claim asserted under this subsection shall be considered by the Board nor shall any member or member organization asserting such a claim have any rights thereunder, unless a written statement of such claim shall have been filed with the Secretary of the Exchange prior to the transfer of the membership of the member against whom claim is being made.

If the proceeds of the transfer of a membership are insufficient to pay in full all claims allowed under this subsection, payment shall be made pro rata upon all such allowed claims.

Third. After provisions for the payment of sums payable under subsections First and Second hereof, there may, in the discretion of the Board, be deducted from the remaining proceeds, if any, and paid to the Exchange the amount of any unusual expenses incurred by the Exchange in connection with litigation involving the disposition of such proceeds, including counsel fees and disbursements and the cost of producing records pursuant to a court order or other legal process.

Fourth. The surplus, if any, of the proceeds of the transfer of a membership, after provision for the payment of sums payable under subsections *First, Second* and *Third* hereof, shall be paid directly to the person whose membership is transferred, or to his or her legal representative, upon the execution and delivery to the Exchange by him or her or such representative of a release or releases satisfactory to the Board, unless the Board, in its discretion, determines that such surplus should be paid to the member organization or former member organization with which such member is or was last associated as a member, in view of the fact that such member had expressly agreed, either in the partnership articles or in a writing filed with the Exchange, that such surplus shall be paid either directly by him or her or directly by the Exchange to such member organization. In the event the Board makes such determination, such surplus shall be paid to such member organization, upon the execution and delivery to the Exchange by such member or such member organization, or both, of a release or releases satisfactory to the Board.

No payment of such surplus under the provisions of this subsection shall be made to a member organization or former member organization with which such member is or had previously been associated as a member if such member organization, in the opinion of the Board, did not take promptly all proper steps to protect and enforce its rights, or if the Board, in its sole discretion, shall determine that an unreasonable time has elapsed between the date when he or she ceased to be such a member in such member organization and the date of the transfer.

Except as otherwise specifically provided for by this Constitution, no recognition or effect shall be given by the Exchange to any agreement or to any instrument entered into or executed by a member or his or her legal representatives which purports to transfer or assign such member's interest in his or her membership, or in the proceeds or any part thereof, or which purports to create any lien or other right with respect thereto, or which purports in any manner to provide for the disposition of such proceeds to a creditor of such member; nor shall payment of such proceeds be made by the Exchange to any agent or attorney-in-fact of a member except as may be permitted by the rules adopted by the Board in those cases in which such agent or attorney-in-fact (a) is acting solely for and on behalf of such member and is neither directly nor indirectly acting in his or her own behalf or in behalf of any third person or (b) is a partner of the member firm or an officer in a member corporation with which such member is associated as a member.

If the amount of any sum payable under the provisions of this Section cannot for any reason be immediately ascertained and determined, the Board may, out of the proceeds of the membership, reserve and retain such amount as it may deem appropriate, pending determination of the amount so payable.

Sec. 12. *Disposition by Board.* When a regular member dies or is expelled, his or her membership may be disposed of by the Board.

Sec. 13. *Death of Sole Exchange Member.* If, upon the death of a regular member who, at the time of his or her death, was associated as a member with a member organization and was the only member so associated, the following conditions exist:

(1) the member organization continues in business, and

(2) the deceased member shall have agreed in a writing filed with the Exchange that such continuing member organization, if permitted by the Board to have the status of a member organization, shall be entitled to have the use of his or her membership from the date of his or her death until the termination of such status of such continuing organization or until a member of the Exchange becomes associated with such organization as a member and that, subject to this Constitution and the rules of the Exchange, the proceeds of his or her membership shall be an asset of the continuing member organization during such period, and

(3) such continuing member organization shall be permitted by the Board to have the status of a member organization,

then upon the transfer of the membership of such deceased member the proceeds thereof shall be applied to the same purposes and in the same order or priority as if such member had continued to be a member of the Exchange associated as such with such continuing member organization until the date of the termination of such status, or until a member of the Exchange becomes associated as a member with such continuing member organization, whichever event occurs first.

Sec. 14. *Rights Under Section 11.* The death, expulsion or suspension of a member or the transfer of his or her membership, or the suspension, retirement or dissolution of a member organization shall not affect the rights of creditors, or the rights of such member, his or her estate or such member organization under the provisions of Section 11 of this Article.

Article III

Meetings of Members

Sec. 1. *Annual Meeting.* A meeting of the members of the Exchange entitled to vote thereat shall be held annually for the election of directors and other elective positions, and for the transaction of any other proper business, at such time as the Board may select on the first Thursday in June in each year or, if the Exchange is not open for business on that day, on the next succeeding business day. At such annual election, there shall be elected by the membership by ballot:

[(a) A class of twelve directors to serve for a term of two years, six of

whom shall be public directors and six of whom shall be industry directors, the members of which shall be qualified to serve under this Constitution,]

(a) all directors to be elected by members to serve for a term of one year;

[(b) A class of four members of the Nominating Committee to serve for a term of two years, two of whom shall be persons who would, were they directors, satisfy the definition of public director, and two of whom shall be persons who would, were they directors, satisfy the definition of industry director,]

(b) two Trustees of the Gratuity Fund who shall be regular members (and not lessor members), to serve for a term of three years; and

[(c) Two trustees of the Gratuity Fund who shall be regular members (and not lessor members), to serve for a term of three years,

(d) Qualified persons to fill any vacancies in the Board, the Nominating Committee, or the trustees of the Gratuity Fund.]

(c) qualified persons to fill any vacancies among the trustees of the Gratuity Fund.

The Board shall distribute its annual nominating report, which lists the nominees to serve in the elective positions, to each member not less than 60 days in advance of the annual meeting.

Nominees by Petition. Members of the Exchange may propose by petition nominees for the positions to be filled at the elections prescribed by this Constitution. Any such nominee must be endorsed by not less than forty members and no member shall endorse more than one nominee, provided, however, that not less than one hundred members may, by petition, propose an entire ticket or any portion thereof. Such petition shall contain for each such potential nominee to the Board a completed questionnaire used by the Board to gather information concerning its nominees (which form the Secretary of the Exchange shall provide upon the request of any member). The petitions shall be filed with the Secretary of the Exchange in sealed envelopes within two weeks after the date fixed for the publication of the Board's annual nominating report. The Secretary of the Exchange shall provide such petitions to the Board. The persons nominated by petition, if found eligible for election by the Board, consistent with the criteria articulated in Article IV, Section 2 of this Constitution, shall be deemed nominees for such offices or positions. The Board's determination of such eligibility shall be final and conclusive.

Prior to the annual meeting proxies shall be solicited for the election of directors and trustees of the Gratuity Fund and for action on such other business as may come before the meeting, in accordance with the further provisions of this Article, including sections 5 and 7 below.

The annual meeting shall be held in the Board room of the Exchange or at such other place as may be fixed in advance by the Board. At the annual meeting, the Board shall present a report for the preceding fiscal year as prescribed by law.

Sec. 2. *Commencement of Term.* The term of office of the persons elected at each annual election shall commence immediately after the annual meeting of members.

Sec. 3. *Vote Required to Elect.* In determining those nominees who have been successfully elected to serve [in any class of] *as* directors, [members of the Nominating Committee,] or trustees of the Gratuity Fund (including nominees to fill any vacancies), nominees [in each such class] receiving the highest number of votes shall be declared elected. [; provided, however, that in determining the results of an election in any class in which there are more nominees than there are offices or positions to be filled, the nominees whose election would result in the required composition of the class shall be declared elected in the order of the highest number of votes received by such nominees in such class, to the exclusion of nominees whose election would not result in the required composition of such class.

For the purpose of determining the results of an election in which there are more nominees than there are offices to be filled in a class of directors, the Nominating Committee, prior to the time when the names of nominees are reported to the Exchange, shall advise the Secretary of the Exchange which of the nominees named by it for such class are:

(a) qualified to serve as public directors, and of these:

(i) which are associated with corporations that are not financial institutions and are the issuers of securities that are admitted to dealings upon the Exchange, and

(ii) which are associated with financial institutions that are significant investors in equity securities; or

(b) qualified to serve as industry directors, and of these:

(i) which are associated with member organizations that engage in a business involving substantial direct contact with securities customers,

(ii) which are registered as specialists and spend a substantial part of their time on the floor of the Exchange,

(iii) which is associated with a member organization that has its principal place of business in the metropolitan area of New York City, is not national in nature and is not engaged in activities as a specialist,

(iv) which spends a majority of his or her time on the floor of the Exchange, has as a substantial part of his or her business the execution of transactions on the floor of the Exchange for other than his or her own account or for the account of his or her member organization, but is not registered as a specialist, and

(v) which of those described in (i) above reside and have their principal places of business outside the metropolitan area of New York City.

The Board, prior to such time, shall determine which of the nominees named by petition for any class of directors fall within one or more of the categories specified above.] In the case of a tie vote, the names of the nominees involved shall be referred to the Board, which, by the affirmative vote of a majority of the entire Board, shall make a selection.

Sec. 4. *Special Meetings of Members.* Special meetings of the members may be called by the Chairman of the Board. The Chairman of the Board shall call[ed] a special meeting of members upon the direction of the Board or upon the written request of one hundred members.

Sec. 5. *Notice of Meetings of Members.* Notice of each meeting of members shall be written, shall state the date, time and place of the meeting, shall state the purpose or purposes for which the meeting is called and unless it is the annual meeting, indicate that it is being issued at the direction of the person or persons calling the meeting. The Secretary of the Exchange shall mail a copy of the notice not less than ten nor more than fifty days before the date of the meeting, to each person who on the date the notice is mailed, is a member who would be entitled to vote at such meeting, and shall deliver a copy to each person who becomes a member entitled to vote at such meeting thereafter and prior to the meeting or any adjournment thereof. If a member shall have filed with the Secretary a proxy authorizing another person or persons to act for such member at any meeting of members, the Secretary shall concurrently mail a copy of the notice of any meeting to the holder of such proxy. When a meeting is adjourned to another time or place, notice shall be given of the adjourned meeting and at

the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. With the notice of annual meeting, the Secretary of the Exchange shall furnish a form of proxy, which shall designate [the] *one or more* members of the [Nominating Committee or any one or more of them,] *Exchange* as persons authorized to act thereunder at the annual meeting.

Sec. 6. *Quorum at Meetings of Members.* Members entitled to cast a majority of the total number of votes entitled to be cast at any meeting, present in person or by proxy, shall constitute a quorum of the members of the Exchange for the transaction of any business, but the members present and entitled to vote thereat may adjourn any meeting despite the absence of a quorum.

Sec. 7. *Proxies.* A member may authorize another person or persons to represent and act as attorney-in-fact for the member in voting on any and all matters at any annual or special meeting of members held during the term of the proxy, or in expressing consent or dissent without a meeting, and in any and all things incidental thereto, such as requesting the call of special meetings of members, proposing by petition nominees for offices or positions to be filled at elections, proposing amendments to this Constitution, or executing for and on behalf of the member waivers of notice. Any such proxy shall be in form satisfactory to the Exchange.

Sec. 8. *Presiding Officer.* At any meeting of the members of the Exchange, if neither the Chairman of the Board nor any person authorized to act for the Chairman under Section 5 of Article VI shall be present, the members present, in person or by proxy, shall elect a presiding officer for the meeting.

Sec. 9. *Vote of Members.* (a) Each regular member in good standing shall be entitled to one vote on each office or position to be filled at any election or upon any other matter at any meeting of the members of the Exchange, including:

(i) any sale, lease, exchange or other disposition of all, or substantially all, the assets of the Exchange,

(ii) any merger or consolidation in which the Exchange is to participate as a constituent corporation within the meaning of the New York Not-For-Profit Corporation Law, and

(iii) any dissolution or final liquidation of the Exchange.

(b) Each physical access member in good standing shall be entitled to one vote, and each electronic access member in good standing who became such prior to [the effective date referred to in subsection (c)] *March 30, 1986* shall be entitled to one-half vote, on each office or position to be filled at any election or upon any other matter at any meeting of the members of the Exchange, provided, however, that such member shall not be entitled to vote on any of the following matters:

(i) any sale, lease, exchange or other disposition of all, or substantially all, the assets of the Exchange,

(ii) any merger or consolidation in which the Exchange is to participate as a constituent corporation within the meaning of the New York Not-For-Profit Corporation Law,

(iii) any dissolution or final liquidation of the Exchange,

(iv) any proposal to amend any of the rights and privileges or limitations thereon pertaining to such a member, or

(v) any election or amendment concerning the Gratuity Fund or the trustees of the Gratuity Fund.

(c) An electronic access member who becomes such on or after [the effective date] *March 30, 1986* shall have no vote at any election or upon any other matter at any meeting of the members. [''Effective date'' shall mean the date that is 30 days after the date on which this subsection becomes effective.]

(d) Whenever any corporate action, other than the election of a person to a position or office, is to be taken by vote of the members, it shall, except as otherwise required by law or by th[is]*e* Constitution, be authorized by a majority of the votes cast by the members entitled to vote thereon, in person or by proxy, at a meeting of the members.

Sec. 10. *Inspectors.* The Board shall, in advance of any meeting of members at which a vote is to be conducted, appoint an inspector to act at the meeting or any adjournment thereof. The person so appointed shall not be an officer or employee of the Exchange, a director of the Exchange, or a director, officer, partner or employee of a member organization.

Article IV

Board of Directors

Sec. 1. *Powers of Board.* The Board shall be vested with all powers necessary for the govern[m]*ance*[nt] of the Exchange, the regulation of the business conduct of members, allied members and member organizations of the Exchange and of approved persons in connection with their conduct of the business of member organizations and the promotion of the welfare, objects and purposes of the Exchange and in the exercise of such powers may adopt such rules, issue such orders and directions and make such decisions as it may deem appropriate.

The Board may prescribe and impose penalties for the violation of rules adopted pursuant to this Constitution and for neglect or refusal to comply with orders, directions or decisions of the Board or for any offense against the Exchange, the penalty for which is not specifically prescribed by this Constitution. *The Board shall have the power to hold meetings at such times and places as it deems advisable, to appoint the Board of Executives, to appoint committees, to appoint officers as provided herein, to employ necessary employees, to authorize proper operating expenditures and to take such other action as may be necessary or proper to carry out the purposes of the Exchange.*

Each person elected to the Board*, and each person serving as a member of the Board of Executives,* who is not a member of the Exchange shall have the right to go upon the Floor of the Exchange but shall not have the right to transact business thereon.

[Sec. 2. Composition of Board. The Board shall consist of twenty-four directors elected by the members of the Exchange, a Chairman of the Board, the Executive Vice Chairman, if there be one, and the President, if there be one. The directors elected by the members shall consist of twelve public directors and twelve industry directors. Directors elected by the members of the Exchange shall be divided into two classes of twelve each (sometimes referred to as class A and class B) whose terms of office shall expire in alternate years. Each class shall consist of six public directors and six industry directors.

(a) the public directors shall include the following:

(i) at least one of the public directors shall be associated with a corporation that is not a financial institution and is the issuer of securities that are admitted to dealings upon the Exchange, and

(ii) at least one of the public directors shall be associated with a financial institution that is a significant investor in equity securities.

(b) the industry directors shall include the following:

(i) two of the industry directors in class A and three of the industry directors in class B shall be associated with member organizations that engage in a business involving substantial direct contact with securities customers and shall reside and have their principal places of business within the metropolitan area of New York City, and

(ii) one of the industry directors of each class shall be associated with a

member organization that engages in a business involving substantial direct contact with securities customers and shall reside and have his or her principal place of business outside the metropolitan area of New York City, and

(iii) one of the industry directors in class A and two of the industry directors in class B shall be registered as specialists and shall spend a substantial part of their time on the floor of the Exchange, and

(iv) one of the industry directors in class A shall be associated with a member organization that has its principal place of business in the metropolitan area of New York City, is not national in nature and is not engaged in activities as a specialist, and

(v) one of the industry directors in class A shall spend a majority of his or her time on the floor of the Exchange, shall have as a substantial part of his or her business the execution of transactions on the floor of the Exchange for other than his or her own account or for the account of his or her member organization, but shall not be registered as a specialist.

No person who has been elected a director by the membership to three consecutive terms shall be eligible for election as a director except after an interval of at least two years. Each person who is not a member of the Exchange and is elected to the Board shall, by the acceptance of the position of director, be deemed to have agreed to uphold this Constitution.]

Sec. 2. Composition of the Board. The Board shall consist of the Chairman of the Board, the Chief Executive Officer (if such individual is not also the Chairman), and such number of directors elected by the members of the Exchange as is fixed from time to time by resolution of the Board, provided that such number shall not be less than six nor more than twelve. The directors elected by the members shall be independent of management of the Exchange, the members, and issuers of securities listed on the Exchange, and shall include directors who will enable the Exchange to comply with the requirements of Section 6(b)(3) of the Act. Among other things, no director elected by the members shall be (a) a member, allied member, lessor member or approved person; (b) an officer or employee of the Exchange; (c) a person employed by or affiliated, directly or indirectly, with a member organization, or with a broker or dealer that engages in a business involving substantial direct contact with securities customers; or (d) an executive officer of an issuer of securities that are listed on the Exchange. In addition, no director shall qualify as independent unless the Board affirmatively determines that the director has no material relationship with the Exchange. The Board shall adopt specific standards relating to such determination, comparable to the standards required of issuers listed on the Exchange, by effecting a rule change within the meaning of Section 19(b)(1) of the Act. Candidates for the Board shall be selected in accordance with such further criteria as the Nominating & Governance Committee shall establish, as set forth in Section 12(a)(1) of this Article IV. The Nominating & Governance Committee shall recommend to the Board the candidates for Board membership; provided, however, that, in order to assure the Exchange is able to meet the requirements of Section 6(b)(3) of the Act concerning members of the Exchange, the Industry Members of the Board of Executives shall recommend to the Board candidates constituting 20% of the number of directors to be elected by the members of the Exchange, but in no event fewer than two directors.

When a single individual serves as both the Chairman and Chief Executive Officer, the Board shall designate a director elected by the members as a lead director to preside over executive sessions of the Board; the Chief Executive Officer shall not participate in executive sessions of the Board. The Board shall also publicly disclose the lead director's name and a means by which interested parties may communicate with the lead director. Each person who is elected to the Board shall, by the acceptance of the position of director, be deemed to have agreed to uphold this Constitution.

[Sec. 3. *Meetings of Board.* Meetings of the Board shall be held at the Exchange's principal office in the state of New York or at such other place, within or without such state, as the Board may from time to time determine or as shall be specified in the notice of any such meeting. The Board shall meet for the purpose of organization, the election of officers and the transaction of other business, on the same day the annual meeting of members is held. Notice of such meeting need not be given. Special meetings of the Board may be called by the Chairman of the Board or pursuant to the written request of four directors upon notice as below prescribed.]

Sec. 3. Term of Office. Directors shall serve for a term of one year (or until the end of the term of his or her predecessor if he or she shall have been elected to succeed a person who has not completed his or her one-year term).

Sec. 4. Resignation of Directors. Any director may resign at any time by giving written notice of resignation to the Board or the Chairman of the Board or the Secretary of the Exchange. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be so specified, then it shall take effect immediately upon its receipt.

Sec. 5. Vacancies. Any Board vacancy shall be filled, after nomination by the Nominating & Governance Committee or the Industry Members of the Board of Executives, as the case may be, by the affirmative vote of a majority of the entire Board, unless the Board shall determine that the vacancy need not be filled until the next annual election. A director so elected shall serve until the next annual election of the Exchange and until his or her successor is elected and takes office.

Sec. 6. Meetings.

(a) Frequency of Meetings. The Board shall have not less than four meetings each year. Special meetings of the directors may be called by the Chairman of the Board, or pursuant to the written request of not less than one-third of the directors then in office, in accordance with the provision of notice of meetings, except when in the judgment of the Chairman, emergency requires shorter notice.

(b) Place of Meetings. Meetings of the Board shall be held at the Exchange's principal office in the state of New York or at such other place, within or without such state, as the Board may from time to time determine or as shall be specified in the notice of any such meeting.

(c) Notice of [Board] Meetings. Notice of a meeting of the Board shall be given by the Secretary of the Exchange or by a person calling the meeting to each director, other than any who have duly waived notice, by written notice mailed first class postage prepaid, not later than five business days before the meeting, or by electronic communication. Any notice shall be sufficient if addressed to a director at his or her office or at such other address as he or she shall have requested the Secretary of the Exchange to direct notices.

[Sec. 5.]*(d) Quorum [at Board Meetings]; Action.* A majority of the entire Board shall be present in person at any meeting of the Board in order to constitute a quorum for the transaction of business at such meeting. Participation in a meeting by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time shall constitute presence in person at a

meeting. Except as otherwise expressly required by law or the certificate of incorporation of the Exchange or this Constitution, the act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board. In the absence of a quorum at any meeting of the Board, a majority of the directors present may adjourn such meeting from time to time until a quorum shall be present. Notice of any adjourned meeting shall be promptly given. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The directors shall act only as a Board and the individual [D]*directors* shall have no power as such.

[Sec. 6. *Organization Meeting.*] *(e) Annual Organizational Meeting. The Board shall hold its annual organizational meeting on the same day as the annual meeting of the members. Notice of the meeting need not be given.* At its organizational meeting, the Board, by the affirmative vote of a majority of the entire Board, shall: *(1)* Elect the Chairman of the Board—[and, from among the industry directors, one or more Vice Chairmen of the Board as the Board may deem appropriate, such Chairman and each such Vice Chairman to serve until the next organization meeting of the Board and until their successors have been elected and take office. At its organization meeting, the Board in its discretion may also]*, and such Chairman shall serve until his or her successor has been elected and takes office; (2) appoint the members of the Board of Executives; and (3) take such other organizational actions as may be appropriate, including the appointment of committees and the appointment or approval of the officers of the Exchange. The Board, at its organizational meeting, shall* by the affirmative vote of a majority [of the entire Board, elect an Executive Vice Chairman of the Board to serve for such period as the Board shall determine. The Board, at its organization meeting, shall by the affirmative vote] of the entire Board, designate the person or persons to serve in the absence, inability to act or vacancy in the office of the Chairman of the Board.

[Sec. 7. *Resignation of Directors.* Any director may resign at any time by giving written notice of resignation to the Board or the Chairman of the Board or the Secretary of the Exchange. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be so specified, then it shall take effect immediately upon its receipt.

Sec. 8. *Vacancies.* Any vacancy in the office of a director of any class elected by the membership shall be filled by the affirmative vote of a majority of the entire Board, unless the Board shall determine that the vacancy need not be filled until the next annual election. Prior to filling such vacancy, the Board shall request the Nominating Committee to submit to the Board the name of the person recommended by the Nominating Committee to fill such vacancy. Any person to be eligible to fill such vacancy must meet the qualifications for election in the class of directors in which the vacancy exists, so that upon his or her election the composition of that class shall meet the requirements of this Article. A director so elected shall serve until the next annual election of the Exchange and until his or her successor is elected and takes office.

Sec. 9. *Loss of Qualification.* If the Board shall determine by the affirmative vote of a majority of the entire Board that any director has lost any qualification needed for office, such person shall cease to be a director and his or her office shall become vacant.

Sec. 10.]

Sec. 7. Action by Written Consent. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or the committee unanimously consent in writing to the adoption of a resolution authorizing the action.

Sec. [11.]*8. Fees and Compensation.* By the affirmative vote of a majority of the entire Board, the Board may fix the fees and compensation to be paid to the directors, members of [such committees as it may from time to time authorize] *the Board of Executives, committee members,* the Chairman of the Board, other officers of the Exchange, arbitrators and the trustees of the Gratuity Fund.

Sec. [12.] *9. Loss of Qualification. If a director ceases to meet the requirements for directors, such director shall be deemed to have tendered his or her resignation for consideration by the Board, and such resignation shall not be effective unless and until accepted by the Board.*

Sec. 10. Failure to Discharge Duties. In the event of the refusal or failure of a director of the Exchange, or a trustee of the Gratuity Fund, to discharge his or her duties, or for any cause deemed sufficient by the Board, the Board may, by the affirmative vote of a majority of the entire Board, remove any such director or trustee and declare that office or position to be vacant.

Sec. [13.]*11. Interpretation of Constitution and Rules.* The Board shall have power to interpret this Constitution and all rules adopted pursuant hereto. Any interpretation made by it shall be final and conclusive.

Sec. 12. Standing Committees. The Standing Committees and their respective Chairmen shall be appointed by the Board at its annual organizational meeting. The Board shall adopt for each Standing Committee a charter consistent with the duties prescribed in the subsections below, and including such additional duties as may be considered appropriate and not inconsistent with this Constitution.

(a) Committees Consisting Solely of Directors. The Standing Committees described in Section 12(a)(1)-(4) shall consist solely of directors, other than the Chief Executive Officer, and shall report to the Board. Such Standing Committees may be combined with any other such Standing Committee, be subdivided into one or more such Standing Committees, or the Board may constitute itself as a committee of the whole in respect of such a Standing Committee; provided, however, that if the Board constitutes itself as a committee of the whole with respect to the activities of the Nominating & Governance Committee, the Human Resources & Compensation Committee, the Audit Committee or the Regulatory Oversight & Regulatory Budget Committee, the Chief Executive Officer shall be recused from such Board deliberations.

(1) Nominating & Governance Committee. The Nominating & Governance Committee shall be responsible for (i) recommending to the Board candidates for Board membership in accordance with Article IV, Section 2 and candidates for Trustees of the Gratuity Fund, (ii) recommending to the Board candidates for Board of Executives membership, (iii) conducting the Board's annual governance review, (iv) reviewing and recommending the Exchange's corporate governance guidelines, (v) establishing an appropriate process for, and overseeing implementation of, the Board's self-assessments (including Board self-assessment, committee self-assessments and director assessments) and the Board of Executives' self-assessments, (vi) recommending director compensation, and (vii) succession planning for the Chairman and Chief Executive Officer of the Exchange. In discharging its responsibilities under clause (i) of the immediately preceding sentence, the Nominating & Governance Committee shall propose persons as candidates for the Board who, in the opinion of the Committee, (a) are committed to serving

the interests of the public and strengthening the Exchange as a public securities market; and (b) include among their number individuals at least one of whom is intended to allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning issuers and at least one of whom is intended to allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning investors. In addition, the Nominating & Governance Committee shall establish procedures to solicit the input of investors in equity securities and members regarding Board candidates. The Nominating & Governance Committee shall also solicit input from the various Exchange communities regarding candidates for appointment by the Board to the Board of Executives. Consensus recommendations for candidates to represent the groups referenced in clauses (ii), (iii) and (iv) of Article V, Section 2(b) put forward by the respective representatives of those groups shall be forwarded to the Board as the recommendations of the Nominating & Governance Committee unless and to the extent such Committee determines that a candidate does not qualify for the position.

(2) Human Resources & Compensation Committee. The Human Resources & Compensation Committee shall be responsible for (i) reviewing and approving corporate goals and objectives relevant to Chief Executive Officer compensation, evaluating the Chief Executive Officer's performance in light of those goals and objectives, and, together with the other directors elected by the members, determining and approving such compensation, (ii) reviewing and approving recommendations regarding compensation and personnel actions involving senior Exchange personnel, including such recommendations involving senior regulatory personnel received from the Regulatory Oversight & Regulatory Budget Committee, and (iii) reporting annually to the members and the public on the compensation of the five most highly compensated officers of the Exchange (as well as director compensation) and on the compensation philosophy and methodology used to award that compensation (including information relating to appropriate comparisons, benchmarks, performance measures and evaluation processes consistent with the mission of the Exchange).

(3) *Audit Committee. The Audit Committee shall be responsible for assisting the board in its oversight of the integrity of the Exchange's financial statements, the Exchange's compliance with legal and regulatory requirements, and the independent auditor's qualifications and independence, including the direct responsibility for (i) the hiring, firing and compensation of the independent auditor, (ii) overseeing the independent auditor's engagement, (iii) meeting regularly in executive session with the auditor, (iv) reviewing the auditor's reports with respect to the Exchange's internal controls, (v) pre-approving all audit and non-audit services performed by the auditor and (vi) determining the budget and staffing for the Internal Audit Unit. The Audit Committee charter shall contain additional duties and responsibilities comparable to those required of issuers listed on the Exchange.*

(4) The Regulatory Oversight & Regulatory Budget Committee. The Regulatory Oversight & Regulatory Budget Committee shall be responsible for (i) assuring the effectiveness, vigor and professionalism of the Exchange's regulatory program, (ii) determining the budget for the Regulatory Group, the Listings and Compliance Unit, the Hearing Board, the Arbitration Unit and the Regulatory Quality Review Unit and (iii) oversight of the Regulation, Enforcement & Listing Standards Committee and the Regulatory Quality Review Unit. This Committee shall determine the Exchange's regulatory plan, budget and staffing proposals annually and shall be responsible for assessing the Exchange's regulatory performance and recommending compensation and personnel actions involving senior regulatory personnel to the Board's Human Resources & Compensation Committee for action.

(b) Joint Committees

(1) The Regulation, Enforcement & Listing Standards Committee shall be composed of both directors (other than the Chief Executive Officer) and Board of Executives members (including at least one Industry Member of the Board of Executives) as selected by the Board; provided, however, that a majority of the members of such committees voting on a matter subject to a vote of such Committee shall be directors. Such committee shall report to the Regulatory Oversight & Regulatory Budget Committee and shall (i) review and provide general advice with respect to the Exchange's programs for market surveillance, member and member organization regulation and enforcement, and the listing and de-listing of securities, and (ii) hear appeals of disciplinary determinations and determinations to de-list a listed company.

(2) Additional joint committees may be appointed by the Board from time to time in its discretion; provided that each shall consist of at least one director (other than the Chief Executive Officer). All such committees shall report to the Board.

Sec. 13. Special Committees, Advisory Committees, Etc. Special committees, subcommittees, advisory committees, boards or councils may be appointed from time to time in the Board's discretion and may be comprised of individuals who are not directors or members of the Board of Executives.

Sec. 14. *Delegation.*

(a) Delegation Authority. The Board may delegate such of its powers as it may from time to time determine, subject to the provisions of th[is]e Constitution and applicable law, to *the Board of Executives,* to such officers and employees of the Exchange, and to such committees, composed either of directors or otherwise, as the Board may from time to time authorize; provided, however, that[a], *except as this Constitution otherwise provides, the Board may not delegate, and no committee may re-delegate, to the Board of Executives or to any committee not consisting solely of directors, authority either to adopt rules under Article VIII, Section 1 or Article IX, Section 1, or to act on any subject matter described in Article IV, Section 12(a) or (b)(1), except by effecting a rule change within the meaning of Section 19(b)(1) of the Act. Any committee of directors to which authority is delegated to adopt rules under Article VIII, Section 1 or Article IX, Section 1 shall include thereon at least one director nominated by the Industry Members of the Board of Executives, as provided in Article IV, Section 2. The Board shall diligently oversee the activities of the Board of Executives, the officers and employees of the Exchange, and any committees to which the Board has delegated authority pursuant hereto.*

(b) Limitation of Delegation Authority. A member, member organization, allied member or approved person affected by a decision of any officer, employee or committee acting under powers delegated by the Board may require a review by the Board of such decision, by filing with the Secretary of the Exchange a written demand therefore within 10 days after the decision has been rendered, except as otherwise provided in Article IX [or the rules thereunder.], *Section 6. Any and all powers delegated by the Board may continue to be exercised by the Board notwithstanding such delegation, and the Board may exercise such review and oversight over the exercise of (or omission to exercise) any delegated authority as it shall at any time determine.*

Sec. 15. *Conflict of Interest.* No director shall participate in the *deliberation or* adjudication of any matter in which he or she is personally interested.

Article V

[Nominating Committee

Sec. 1. *Composition, Organization Meeting and Eligibility.* The Nominating Committee shall be composed of:

(a) Four persons who would, were they directors, satisfy the definition of public director; and

(b) Four persons who would, were they directors, satisfy the definition of industry director.

The members of the Nominating Committee shall be divided into two classes of four each whose terms of office shall expire in alternate years. Each class shall consist of two persons described in (a) above, and two persons described in (b) above.

On the first Monday after the annual election of the Exchange, or as soon thereafter as may be practicable, the members of the Nominating Committee, by the affirmative vote of a majority of such members, shall elect a chairman who shall be a member of the Nominating Committee and who shall serve until the next annual meeting of the Nominating Committee and until his or her successor is elected and takes office. The chairman of the Nominating Committee shall not succeed himself or herself as chairman and the office of chairman shall alternate from year to year between a member of the Nominating Committee described in (a) above and a member of the Nominating Committee described in (b) above.

No director shall be eligible to serve on the Nominating Committee. No member of the Nominating Committee who has served the full term for which he or she was elected by the membership shall be eligible for reelection to the Nominating Committee in the year during which such term expires. No member of the Nominating Committee who has been elected to fill a vacancy in the Nominating Committee shall be eligible for reelection to the Nominating Committee in the year during which the term of the member being replaced expires. Any vacancy in the Nominating Committee shall be filled by the remaining members thereof, who shall elect a person qualified to fill the vacancy who shall serve until the next annual election of the Exchange and until his or her successor is elected and takes office. The Board shall have no control over or power with respect to the Nominating Committee. Nothing in this Section is to be construed to prevent the Nominating Committee from soliciting the views of the Chairman or other members of the Board.

Sec. 2. Public Meetings. The Nominating Committee shall hold one or more meetings, to which all members and allied members shall be invited for the purpose of suggesting nominees for the offices and positions to be filled at the annual election of the Exchange. The Nominating Committee shall report to the Secretary of the Exchange, not later than the second Monday in March, nominees for such offices and positions. Each nominee shall be a person who, in the opinion of the Nominating Committee, is eligible for election to the office or position for which he or she is nominated. The Secretary of the Exchange shall, on receipt of the report of the Nominating Committee, notify the members of the Exchange of the names of such nominees. The Chairman of the Board shall serve in a consultative role to the Nominating Committee. In that capacity the Chairman of the Board shall meet with the Nominating Committee prior to March 1 of each year to report on the needs of the Board and to provide any other information relevant to the work of the Nominating Committee.

Sec. 3. Nominees by Petition. Members of the Exchange may propose by petition nominees for the offices or positions to be filled at the elections prescribed by this Constitution. Any such nominee must be endorsed by not less than forty members and no member shall endorse more than one nominee, provided, however, that one hundred members may, by petition, propose an entire ticket or any portion thereof. The petitions shall be filed with the Secretary of the Exchange in sealed envelopes within two weeks after the date fixed for the report of the Nominating Committee. The Nominating Committee and the Secretary of the Exchange shall open such envelopes and shall report to the Board the names of the persons nominated by petition who, if found eligible for election by the Board, shall be deemed nominees for such offices or positions.

Sec. 4. Names of Nominees. The names of all nominees shall be arranged on the ballot in alphabetical order for each class of office or position and shall be reported to the Exchange promptly after the Board shall have passed upon the eligibility of the persons nominated by petition. The names of the persons nominated by the Nominating Committee shall be identified by an appropriate legend or symbol.

Sec. 5. Death, etc., of Nominee. In case of the death, withdrawal, disqualification or failure to qualify, at any time in advance of the annual election, of any nominee for one of the offices or positions to be filled at such annual election, the election of a person to fill such office or position shall not be held at the annual meeting of the members of the Exchange, but this shall not delay the election of persons to fill all other offices or positions. The Board, by the affirmative vote of a majority of the entire Board, thereupon may declare such office or position vacant and if the election for such office or position was not contested may elect a person to fill the vacancy to hold office until the annual election of the Exchange in the succeeding year. Prior to filling such vacancy, the Board shall request the Nominating Committee to submit to the Board the name of the person recommended by the Nominating Committee to fill such vacancy. If such election was contested, the Board shall direct that such office or position be filled by vote of the members of the Exchange entitled to vote thereon at a special meeting of the members. If such special meeting shall be directed, the Board shall call the meeting and determine the procedure for nominations and voting by proxy at the meeting.

Sec. 6. Selection of Nominees. The Nominating Committee in seeking nominees for all offices and positions shall propose persons who, in the opinion of the Nominating Committee, are committed to serving the interests of the public and strengthening the Exchange as a public securities market.

In selecting nominees who are to be members of the Nominating Committee, the Nominating Committee should consider representatives from all Exchange constituencies, taking care to avoid having an undue concentration of such nominees from any one area or industry.

In seeking nominees who are to be public directors, the Nominating Committee should consider, among others, representatives of corporations, the securities of which are admitted to dealings upon the Exchange and representatives of financial institutions, such as investment companies, banks and trust companies, and insurance companies, which are significant investors in equity securities, care being taken to avoid having an undue concentration of such nominees from any one area or industry.]

Board of Executives

Sec. 1. Powers and Authority of the Board of Executives. The Board shall

establish a Board of Executives. Subject to the Board's ultimate authority, review and oversight and except with respect to the responsibilities delegated to the Standing Committees, pursuant to Article IV, Section 12, the Board of Executives shall advise the Chief Executive Officer in his or her management of the operations of the Exchange. Copies of any materials, documents or reports prepared or received by the Board of Executives shall be furnished to the Board of Directors. Industry Members of the Board of Executives (as defined in Section 2 of this Article) shall also be responsible for recommending to the Board candidates for Board membership in accordance with, and who meet the criteria provided for in, Article IV, Section 2 of this Constitution. In discharging this responsibility, the Industry Members of the Board of Executives shall propose persons who, in their opinion, (i) are committed to serving the interests of the public and strengthening the Exchange as a public market, and (ii) will allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning members of the Exchange.

Sec. 2. Composition of Board of Executives.

(a) The Board of Executives shall provide a reasonably balanced representation of the many communities that come together in the Exchange: listed companies, investors, members and member organizations, and lessor members.

(b) The Board of Executives shall consist of the Chairman of the Board (who shall be the Chairman of the Board of Executives), the Chief Executive Officer (if such individual is not also the Chairman), and at least 20 but no more than 25 members (''Board of Executives members''). The Board of Executives members (other than the Chairman and Chief Executive Officer) shall be appointed by the Board at its annual organizational meeting and shall consist of (i) at least six individuals who are either the chief executive or a principal executive officer of a member organization that engages in a business involving substantial direct contact with securities customers, (ii) at least two individuals who are either the chief executive or a principal executive officer of a specialist member organization, (iii) at least two individuals, each of whom spends a majority of his or her time on the Floor of the Exchange, and has as a substantial part of his or her business the execution of transactions on the Floor of the Exchange for other than his or her own account or the account of his or her member organization, but who shall not be registered as a specialist, (iv) at least two individuals who are lessor members who are not affiliated with a broker or dealer in securities, (v) at least four individuals who are either the chief executive or a principal executive officer of an institution that is a significant investor in equity securities, at least one of whom shall be a fiduciary of a public pension fund; and (vi) at least four individuals who are either the chief executive or a principal executive officer of a listed company (the members of the Board of Executives referenced in subsections (i), (ii), and (iii) herein collectively shall be called ''Industry Members of the Board of Executives''). If the Board increases the size of the Board of Executives it shall strive to maintain approximately the same balance between Industry Members of the Board of Executives and other members of the Board of Executives as is represented above. If the Board increases the size of the Board of Executives, it shall also be free to add members to the Board of Executives who represent other elements of the Exchange community. Each person who is not a member of the Exchange and is appointed to the Board of Executives shall, by the acceptance of such position, be deemed to have agreed to uphold this Constitution.

Sec. 3. Term of Office. Board of Executives members shall serve for a term of one year (or until the end of the respective term of his or her predecessor if he or she shall have been appointed to succeed a person who has not completed his or her term).

Sec. 4. Resignation of Board of Executives Members. Any Board of Executives member may resign at any time by giving written notice of resignation to the Board of Directors, the Chairman of the Board, or the Secretary of the Exchange. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be so specified, then it shall take effect immediately upon its receipt.

Sec. 5. Vacancies. Any vacancy in the office of a Board of Executives member may be filled by the Board. A Board of Executives member so appointed shall serve until the next annual organizational meeting of the Board of Executives and until his or her successor is appointed by the Board and takes office.

Sec. 6. Meetings.

(a) Frequency of Meetings. The Board of Executives shall have not less than six meetings each year. Special meetings of the Board of Executives may be called by the Chairman of the Board, or pursuant to the written request of not less than one third of the Board of Executives members then in office, in accordance with the provision of notice of meetings, except that when in the judgment of the Chairman of the Board, emergency requires shorter notice.

(b) Place of Meetings. Meetings of the Board of Executives shall be held at the Exchange's principal office in the state of New York or at such other place, within or without such state, as the Board of Executives may from time to time determine or as shall be specified in the notice of any such meeting.

(c) Notice of Meetings. Notice of a meeting of the Board of Executives shall be given by the Secretary of the Exchange or by a person calling the meeting to each Board of Executives member, other than any who have duly waived notice, by written notice mailed first class postage prepaid, not later than five business days before the meeting, or by electronic communication. Any notice shall be sufficient if addressed to a Board of Executives member at his or her office or at such other address as he or she shall have requested the Secretary of the Exchange to direct notices. Whenever any notice is required to be given under the provisions of the certificate of incorporation or the Constitution of the Exchange, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

(d) Quorum; Action. A majority of the entire Board of Executives shall be present in person at any meeting of the Board of Executives in order to constitute a quorum for the transaction of business at such meeting. Participation in a meeting by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time shall constitute presence in person at a meeting. Except as otherwise expressly required by law or the certificate of incorporation of the Exchange or the Constitution, the act of a majority of the members of the Board of Executives present at any meeting at which a quorum is present shall be the act of the Board of Executives. In the absence of a quorum at any meeting of the Board of Executives, a majority of the members of the Board of Executives present may adjourn such meeting from time to time until a quorum shall be present. Notice of any adjourned meeting shall be promptly given. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the

meeting as originally called. The members of the Board of Executives shall act only as a Board of Executives and the individual members shall have no power as such.

(e) Annual Organizational Meeting. The Board of Executives shall hold its annual organizational meeting as soon following the organizational meeting of the Board of Directors as practical. Notice of such meeting need not be given.

Sec. 7. Action by Written Consent. Any action required or permitted to be taken by the Board of Executives or any committee thereof may be taken without a meeting if all members of the Board of Executives or the committee unanimously consent in writing to the adoption of a resolution authorizing the action.

Sec. 8. Loss of Qualification. If a Board of Executives member ceases to meet the requirements for members of the Board of Executives, such Board of Executives member shall be deemed to have tendered his or her resignation for consideration by the Board, and such resignation shall not be effective unless and until accepted by the Board.

Sec. 9. Failure to Discharge Duties. A member of the Board of Executives has under the New York Not-for-Profit Corporation Law the duties of an officer of the Exchange. In the event of the refusal or failure of a member of the Board of Executives to discharge his or her duties, or for any cause deemed sufficient by the Board of Executives or the Board of Directors, the Board of Executives or the Board of Directors may, by the affirmative vote of a majority of the entire Board or the entire Board of Executives, remove any such Board of Executives member and declare that office or position to be vacant.

Sec. 10. Conflict of Interest. No Board of Executives member shall participate in the deliberation or adjudication of any matter in which he or she is personally interested.

Sec. 11. Plenary Sessions of the Board and the Board of Executives. The Board and the Board of Executives shall meet jointly (a ''Plenary Session'') at least twice each year. The Chairman of the Board shall chair all Plenary Sessions.

Article VI

Officers

Sec. 1. [Titles]*Officers.* The officers of the Exchange shall include the Chairman of the Board, the *Chief* Executive [Vice Chairman, if there be one, one or more Vice Chairmen]*Officer,* the President, if there be one*, the Chief Regulatory Officer*, one or more Vice Presidents (one or more of whom may be designated as Executive Vice Presidents or as Senior Vice Presidents or by other designations), a Secretary, a Treasurer, a Controller and such other officers as the [Chairman]*Chief Executive Officer* may propose, subject to the approval of the Board. *Any office may be occupied by more than one individual.* An officer, [other than any Vice Chairman,] if a member of the Exchange at the time of election, shall promptly thereafter dispose of his or her membership by sale or lease, and if by lease, the power to vote must be disposed of by the lease. The *Board shall appoint the Chairman, the Chief Executive Officer, and the Chief Regulatory Officer. If the Chairman is neither the Chief Executive Officer nor chosen from among the directors elected by the members, he or she must satisfy the independence criteria for Board membership set forth in Article IV, Section 2 of this Constitution. The* President and the officers of the Exchange, [other than the Executive Vice Chairman and the Vice Chairmen,] shall be appointed by the [Chairman] *Chief Executive Officer,* subject to approval of the Board. Each officer of the Exchange, by his or her acceptance of such office, shall be deemed to have agreed to uphold this Constitution. *While no officer of the Exchange shall have any authority to recommend candidates for election to the Board or for appointment by the Board to any committee, the Board or the Nominating & Governance Committee may solicit the input of any Exchange officer at its own initiative and discretion.*

[Sec. 2. *Chairman of the Board.* The Chairman of the Board shall be the chief executive officer of the Exchange, responsible for the management and administration of its affairs, and shall be the official representative of the Exchange in all public matters. The Chairman of the Board shall be the presiding officer of the Board and an *ex officio* member of all committees authorized by the Board. The Chairman of the Board may call special meetings of the Board and shall call special meetings of the Board upon the written request of four directors.

Sec. 3. *The Executive Vice Chairman, the President and Officers other than Vice Chairmen.* The Executive Vice Chairman, the President and other officers, other than Vice Chairmen, shall have such functions and responsibilities as the Chairman may from time to time assign, subject to the approval of the Board.]

Sec. 2. The Chairman. The Chairman shall preside at all meetings of the Board and of the Board of Executives and shall decide all questions of order, subject, however, to an appeal to the Board; provided, however, that if the Chairman is also the Chief Executive Officer, he or she shall not participate in executive sessions of the Board. If the Chairman is not the Chief Executive Officer, he or she shall act as liaison officer between the Board and the Chief Executive Officer. In addition to his or her usual duties, the Chairman shall make an Annual Report on the Exchange's activities to a Plenary Session.

Sec. 3. The Chief Executive Officer. Subject to the authority of the Board, the Chief Executive Officer of the Exchange shall be responsible for the management and administration of the affairs of the Exchange.

Sec. 4. [*The Vice Chairmen.* Each Vice Chairman of the Board] *Chief Regulatory Officer and Other Officers.*

(a) Chief Regulatory Officer. Subject to the authority of the Board and the Regulatory Oversight & Regulatory Budget Committee, and to the administrative standards and policies established by the Chief Executive Officer made applicable to the Chief Regulatory Officer by the Regulatory Oversight & Regulatory Budget Committee, the Chief Regulatory Officer shall be responsible for the management and administration of the regulatory functions of the Exchange.

(b) Other Officers. The President and other officers shall have such functions and responsibilities as the [Board] *Chief Executive Officer* may from time to time assign[.]*, subject to the approval of the Board, and, in the case of senior regulatory personnel, subject to the specific oversight and control of the Regulatory Oversight & Regulatory Budget Committee.*

Sec. 5. *Absence, Inability to Act or Vacancy in Office of the Chairman.* In case of the absence, inability to act or vacancy in office of the Chairman of the Board, such other person or persons as the Board, by the affirmative vote of a majority of the entire Board, may designate shall assume all the functions and discharge all the duties of the Chairman.

Sec. 6. *Removal.* Any officer of the Exchange [approved by the Board may be removed, either with or without cause, at any time by the Chairman subject to approval by the Board. The Chairman] may be removed, either with or without cause, by the affirmative vote of *a* majority of the entire Board.

Article VII

Exchange Contracts

Sec. 1. *Exchange Contracts.* All contracts of a member of the Exchange or a member organization with any member of the Exchange or with any member organization for the purchase, sale, borrowing, loaning or hypothecation of securities (other than option contracts issued or issuable by The Options Clearing Corporation), or for the borrowing, loaning or payment of money, whether occurring on the Exchange or elsewhere, shall be Exchange Contracts, unless made subject to the rules of another [E]*e*xchange, or unless the parties thereto have expressly agreed that the same shall not be Exchange Contracts.

Sec. 2. *Constitution and Rules Part of Exchange Contracts.* The provisions of this Constitution and of the rules adopted pursuant hereto shall be a part of the terms and conditions of all Exchange Contracts and all such contracts shall be subject to the exercise by the Board of the powers with respect thereto vested in them by this Constitution and such rules.

Sec. 3. *Binding Nature of Floor Transactions.* Each contract entered into on the floor of the Exchange by any member who is associated as a member with any member organization shall be binding on such member organization in all respects and without limit and such member organization shall be fully responsible therefor. Each member organization shall execute and file with the Exchange such documentation as the Board by rule may require evidencing (a) the authority of any member who is an officer or employee of such member organization to transact business on the floor on behalf of such member organization, and (b) such member organization's responsibility and obligation with respect to any contract entered into on the floor by any such member.

Sec. 4. *Options Contracts.* All contracts for the purchase or sale or writing of options contracts issued or issuable by The Options Clearing Corporation, occurring on the Exchange, shall be made subject to the provisions of this Constitution and of the rules adopted pursuant hereto and of the by-laws and rules of The Options Clearing Corporation; and all such contracts shall be subject to the exercise by the Board and The Options Clearing Corporation of the powers with respect thereto vested in them by this Constitution and the rules adopted pursuant hereto and by the by-laws and rules of The Options Clearing Corporation.

Article VIII

Regulation

Sec. 1. *Rulemaking.* The Board may, by the affirmative vote of a majority of the entire Board, adopt, amend or repeal such rules as it may deem necessary or proper, including rules with respect to (a) the making and settling of Exchange Contracts, (b) the access of members to and the conduct of members upon the floor of the Exchange and their use of floor facilities, (c) insolvency of members and member organizations, (d) the formation of member organizations, the continuance thereof and the interests of members, allied members and other persons therein, (e) the partners, officers, directors, stockholders and employees of members and member organizations, (f) the offices of members, allied members and member organizations, (g) the business conduct of members, allied members and member organizations, (h) the business connections of members, allied members and member organizations, and their association with or domination by or over corporations or other persons engaged in the securities business, (i) capital requirements for members and member organizations, (j) the procedure for arbitration, (k) transfers of memberships and disposition of the proceeds of such transfers, (l) types, terms, conditions and issuance of securities by member organizations and trading in such securities, (m) the conduct and procedure for disciplinary hearings and reviews therefrom, (n) the location and use on the floor of the Exchange of such facilities as may be approved by the Board to permit members to send orders from the floor to other markets and receive orders on the floor from other markets for the purchase or sale of securities traded on the Exchange, and (o) options trading rights and options trading right holders.

Sec. 2. *Supervision.* The Board shall have general supervision over members, allied members and member organizations and over approved persons in connection with their conduct of the business of member organizations. It may examine into the business conduct and financial condition of members, allied members, approved person and member organizations. It shall have supervision over partnership and corporate arrangements and over all offices of such members and organizations, whether foreign or domestic, and over all persons employed by such members and organizations, and may adopt such rules with respect to the employment, compensation and duties of such employees as it may deem appropriate. [The Board may require that transactions in securities admitted to dealings on the Exchange shall be executed on the Exchange.] It shall have supervision over all matters relating to the collection, dissemination and use of quotations and of reports of prices on the Exchange. It shall have the power to approve or disapprove of any connection or means of communication with the floor and may require the discontinuance of any such connection or means of communication. It may disapprove of any member acting as a specialist or odd-lot dealer.

Sec. 3. *Listing of Securities.* The Board may approve applications for the listing of securities and the admission of securities, including securities on a ''when issued'' or ''when distributed'' basis, to dealings on the Exchange, and may suspend dealings in such securities and may remove the same from listing.

[Sec. 4. *Corners.* Whenever in the opinion of the Board a corner has been created in a security admitted to dealings on the Exchange, or a single interest or group has acquired such control of a security so admitted that the same cannot be obtained for delivery on existing contracts except at prices and on terms arbitrarily dictated by such interest or group, the Board may postpone the time for deliveries on Exchange Contracts therein, and may from time to time further postpone such time or may postpone deliveries until further action by the Board, and may at any time by resolution declare that if such security is not delivered on any contract calling for delivery thereof at or before the time to which delivery has been postponed or which has been fixed by the Board for such delivery, such contract shall be settled by the payment to the party entitled to receive such security or by the credit to such party of a fair settlement price as agreed by the parties to the contract, or if the parties to any contract which is to be settled on the basis of such fair settlement price do not agree with respect thereto, such fair settlement price and the date for the payment of the same may be fixed by the Board. The Board before fixing the same shall give the parties to the contract which is to be settled on the basis thereof an opportunity to be heard either before the Board or before a committee authorized for the purpose. Any such committee shall report the testimony together with its conclusions thereon to the Board which may act upon such report without further hearing or may accord the parties a further hearing before acting thereon.]

Article IX

Disciplinary Proceedings

Sec. 1. *Disciplinary Rules.* The Board shall adopt such rules as it deems necessary or appropriate for the discipline of members, member organizations, allied members, approved persons, and registered and non-registered employees of members and member organizations for the violation of the Act, the rules of the Exchange and for such other offenses as may be set forth in the rules of the Exchange. The Board shall also adopt such rules as it deems necessary or appropriate governing the conduct of disciplinary proceedings including disciplinary hearings and reviews thereof. The determination and penalty, if any, of the Board after review shall be final and conclusive, subject to the provisions of the Act.

Sec. 2. *Hearing Panel.* All proceedings relating to disciplinary matters, except as otherwise specifically set forth in the rules of the Exchange with respect to procedural and evidentiary matters, shall be conducted before a hearing panel consisting of at least three persons; a hearing officer, who shall be chairman of the panel, with the remainder of the panel being members of the hearing board.

Sec. 3. *Hearing Board.* The Chairman of the Board, subject to the approval of the Board, shall from time to time appoint a hearing board to be composed of such number of members and allied members of the Exchange who are not members of the Board, and registered employees and non-registered employees of members and member organizations, as the Chairman of the Board shall deem necessary. The members of the hearing board shall be appointed annually and serve at the pleasure of the Board. The Chairman of the Board, subject to the approval of the Board, shall also designate from among the officers and employees of the Exchange a chief hearing officer and one or more other hearing officers who shall have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters and who shall be appointed annually and shall serve as hearing officers at the pleasure of the Board.

Sec. 4. *Composition of Hearing Panel.* In any disciplinary proceeding involving as a respondent therein a member, member organization, allied member, or approved person, the members of the hearing board serving on the panel shall be members or allied members. In any such proceeding relating to activities on the floor of the Exchange, at least one of the persons serving on the panel shall be a member active on the floor of the Exchange. In any such proceeding relating to any other activities, at least one of the persons serving on the panel shall work in the office of a member or member organization which engages in a business involving substantial direct contact with securities customers.

In any disciplinary proceeding involving as a respondent therein a registered or non-registered employee of a member or member organization who is not a member or allied member, the members of the hearing board serving on the panel shall be registered employees or non-registered employees of members or member organizations who are not members or allied members. In any such proceeding relating to such employee's activities on the floor of the Exchange, at least one of the persons serving on the panel shall be a registered or non-registered employee of a member or member organization active on the floor of the Exchange who is not a member or allied member.

In any such proceeding relating to any other activities, at least one of the persons serving on the panel shall work in the office of a member or member organization which engages in a business involving substantial direct contact with securities customers.

In any disciplinary proceeding involving as joint respondents therein one or more members or member organizations, allied members or approved persons, together with one or more registered or non-registered employees of a member or member organization who are not members or allied members, at least one of the persons serving on the panel shall be a member or allied member and at least one other person serving on the panel shall be a registered or non-registered employee of a member or member organization who is not a member or allied member, and the functional qualifications required of hearing panel members as stated in this Section shall be satisfied.

The decision of a majority of the panel shall be the decision of the panel and shall be final and conclusive, unless a request to the Board for review is filed as provided in this Article and in the rules of the Exchange.

Sec. 5. *Penalties* [*and Review*]. If a member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization is adjudged guilty in any disciplinary proceeding, the hearing panel shall impose one or more of the following disciplinary sanctions: expulsion, suspension; limitation as to activities, functions, and operations, including the suspension or cancellation of a registration in, or assignment of, one or more stocks, fine, censure, suspension or bar from being associated with any member or member organization, or any other fitting sanction. In any disciplinary proceeding, any sanction imposed may be remitted or reduced by the hearing panel on such terms and conditions as it shall deem fair and equitable. In a disciplinary proceeding involving a written consent to the imposition of a specified penalty, the hearing panel, in imposing a penalty, may impose the penalty agreed to or any penalty which is less severe than the stipulated penalty as it deems appropriate or the hearing panel may reject such consent.

Sec. 6. Review [by Board]. In a disciplinary proceeding not involving a written consent to the imposition of a specified penalty, any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, adjudged guilty of any charge, or the division or department of the Exchange which brought the charges, or any member of the Board *or the Board of Executives*, may, in accordance with procedures set forth in the rules of the Exchange, require a review by the Board, of any determination or penalty, or both, imposed by the hearing panel. Upon review, the Board, by the affirmative vote of a majority of the entire Board, may sustain any determination or penalty imposed, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under this Article as it deems appropriate.

In a disciplinary proceeding involving a written consent to the imposition of a specified penalty, any member of the Board *or the Board of Executives* may require a review by the Board of any determination or penalty, or both, imposed by the hearing panel. In any such proceeding, the division or department which entered into the written consent, may require a review by the Board of any penalty, including any determination related thereto, imposed by the hearing panel, which is less severe than the stipulated penalty. The respondent or the division or department which entered into the written consent may require a review by the Board of any rejection of the written consent by the hearing panel. Any review provided in this paragraph shall be conducted in accordance with procedures set forth in the rules of the Exchange. Upon review, the Board, by

the affirmative vote of a majority of the entire Board, may fix and impose the penalty agreed to in such written consent or any penalty which is less severe than the stipulated penalty, or remand the case for further proceedings.

Article X

Membership Fees

Sec. 1. Amount fixed by Board. (a) The membership fee payable by a regular or lessee member, exclusive of fines and of such other charges as may be imposed pursuant to this Constitution and of contributions to the Gratuity Fund, shall be fixed by the Board from time to time and shall not exceed $1,500 in any calendar year. Such membership fee shall be payable in advance on the first of each month.

(b) The membership fee payable by a physical access member, with respect to each year of such membership, exclusive of fines and of such other charges as may be imposed pursuant to this Constitution, shall be the sum of (i) the average of the annual rentals payable under the bona fide leases of membership entered into during the six calendar months (or another period representative of the current lease market) prior to the beginning of such year, (ii) $1,500, and (iii) with respect to the first year of such membership only, $5,000; provided, however, that if at any time the membership fee payable pursuant to Section 1(a) of this Article is in excess of, or less than, $1,500 per year, the amount provided in clause (ii) above shall be correspondingly increased or reduced, and if the maximum amount payable by a new member described in Section 4(a) or (b) of Article II is in excess of, or less than, $5,000, the amount provided in clause (iii) above shall be correspondingly increased or reduced. Such membership fee shall be paid in full prior to admission to membership, and prior to any renewal of such member's membership.

(c) The membership fee payable by an electronic access member, exclusive of fines and of such other charges as may be imposed pursuant to th[is]*e* Constitution, shall be fixed by the Board from time to time, and shall be not less than $13,500 annually. Such membership fee shall be paid in full prior to admission to membership, and prior to any renewal of such member's membership.

Sec. 2. Exemption to Members in Armed Forces. The Board may, on the request of a member who, in time of national emergency,

(a) is on active duty in the armed forces of the United States, or

(b) is on active duty in the armed forces of any nation or state which is then allied or associated with the United States,

and who, in the determination of the Board, is not able to obtain a qualified alternate, exempt such member from the payment of membership fees, under such terms and conditions and to such extent as the Board may prescribe.

Sec. 3. Allocation of Membership Fees. The membership fees payable by any regular or lessee member may be divided by the Board into two parts, one of which shall constitute the member's contribution to the current expenses of the Exchange for the quarter, as estimated by the Board, and the other of which shall constitute the member's contribution towards the capital investment of the Exchange, which shall include advances to its subsidiaries to cover capital expenditures.

Sec. 4. Charges on Floor Transactions. The Board may, from time to time, fix and impose a charge upon members and member organizations, measured by the number of, the value of, the number of shares, warrants, rights or bonds associated with, or the commissions or net commissions on, transactions effected on the Exchange. The total charges imposed on any member or member organization pursuant to this paragraph relating to purchases and sales of stocks and bonds on the Exchange during any calendar month shall not exceed two percent of the total of the net commissions of such member or member organization relating to such purchases and sales during such month. Such charge shall be payable at such times and shall be collected in such manner as may be determined by the Board.

The Board may, from time to time, fix and impose a charge upon members and member organizations measured by their respective odd-lot purchase and sales transactions as odd-lot dealers on the Exchange. The amount of such charge shall not exceed one quarter of one cent per share on any odd-lot purchase or sale. Such charge shall be payable at such time and shall be collected in such manner as may be determined by the Board.

Sec. 5. *Charges or Fees for Facilities or Services.* The Board may, from time to time, fix and impose other charges or fees to be paid to the Exchange by members and member organizations for the use of equipment or facilities or for particular services or privileges granted.

Sec. 6. *Penalty for Non-payment.* (a) A regular or lessee member who shall not pay his or her membership fees, or any member who shall not pay a fine, or a contribution to the Gratuity Fund or any other sums due the Exchange, within forty-five days after the same shall become payable shall be reported by the Treasurer to the Chairman of the Board and, after written notice mailed to him or her of such arrearages, may be suspended by the Board until payment is made.

(b) Whenever the Treasurer shall report to the Chairman of the Board that a member organization has neglected to pay a fine or any other sums due the Exchange within forty-five days after the same shall become payable, any member in such member organization, after written notice mailed to such member of such arrearages, may be suspended by the Board until payment is made.

(c) Whenever the Treasurer shall report to the Chairman of the Board that an allied member has neglected to pay a fine or any other sums due the Exchange within forty-five days after the same shall become payable, the allied membership of such allied member shall terminate, unless the Board shall have granted an extension of time to pay such fine.

(d) Should any payment referred to in this Section not be made within one year after payment is due, the membership of a delinquent regular or lessee member may be disposed of by the Board on at least ten days' written notice mailed to such member (and to the lessor of such membership, if any) at the address registered with the Exchange.

Sec. 7. *Effect of Suspension.* A member suspended under the provisions of this Article shall be deprived, during the period of his or her suspension, of all rights and privileges of membership, but such member may be proceeded against by the Exchange for any offense committed by such member either before or after such suspension. No such suspension shall operate to bar or affect the payments provided for by the Gratuity Fund in the event of the death of the suspended member.

The suspension of a member under the provisions of this Article shall create a vacancy in any office or position held by him or her.

Sec. 8. *Liability for Fees and Contributions Until Transfer.* Notwithstanding the death or expulsion of a regular or lessee member, the membership of such member until transferred shall continue liable for membership fees to the Exchange, as from time to time fixed by the Board, for contributions to the Gratuity Fund and for any other payments due the Exchange.

Sec. 9. *Other Charges.* In addition to the fees and charges provided for or authorized by Sections 1, 4 and 5 of this Article, the Board may from time to time fix and impose such other charge or charges upon members and member organizations as are authorized by this Constitution; provided, however, that any such charge or charges imposed upon member organizations shall be measured by the number of, the value of, or the commissions or net commissions on, transactions effected on the floor of the Exchange or transactions in securities admitted to dealings on the Exchange regardless of the market in which such transactions are effected.

Article XI

Arbitration

Sec. 1. *Controversies Arbitrated.* Any controversy between parties who are members, allied members or member organizations and any controversy between a member, allied member or member organization and any other person arising out of the business of such member, allied member or member organization, or the dissolution of a member organization, shall at the instance of any such party be submitted for arbitration in accordance with the provisions of this Constitution and such rules as the Board may from time to time adopt.

Sec. 2. *Arbitration Rules.* All arbitration proceedings shall be conducted in accordance with, and before arbitrators selected as provided by, such rules as the Board shall from time to time adopt.

Sec. 3. *Power to Decline Use of Arbitration Facilities.* The Board may decline in any case to permit the use of the arbitration facilities of the Exchange and may delegate such power.

Article XII

Indemnification

Sec. 1. *Indemnification.* Any person made, or threatened to be made, a party to any action or proceeding, whether civil or criminal, by reason of the fact that he or she, his or her testator or intestate, is or was a director or officer of the Exchange or *a member of the Board of Executives or* serves or served any other corporation, or any partnership, joint venture, trust or other enterprise, in any capacity at the request of the Exchange, shall be indemnified by the Exchange, and the Exchange may advance his or her related expenses, to the full extent permitted by law.

Indemnification shall be accorded by the Exchange, and related expenses may be advanced, in respect of members of any committee authorized by this Constitution or by the Board*, the members of the Board of Executives*, floor officials, arbitrators, members of the hearing board, trustees of the Gratuity Fund, trustees of the Exchange's Special Trust Fund, employees of the Exchange and directors, officers and employees of any corporation a majority of the stock of which is held by the Exchange to the same extent as provided by law in respect of directors and officers. The foregoing right of indemnification shall not affect any rights to indemnification to which persons other than directors and officers of the Exchange may be entitled by contract or otherwise under law.

Article XIII

(Reserved.)

[Management in an Emergency

Sec. 1. *Emergency Powers.* Whenever it shall appear to the Board that an emergency exists, other than as provided for in the following Sections of this Article, it may by resolution adopted by a majority of the entire Board delegate all of its powers which may lawfully be delegated, for such period as it may determine, to a special committee, to be composed of three or more directors, at least one-half of whom shall be industry directors. The Board by such resolution may designate one or more industry directors as alternates for the members of such committee who are industry directors of the Exchange and one or more other directors as alternates for the members of such committee who are public directors. Directors so designated may replace any absent member or members for whom they are alternates at any meeting of such committee.

Sec. 2. *Defense Emergency Act.* The provisions of the balance of this Article constitute emergency by-laws under Subdivision 17 of Section 12 of the New York State Defense Emergency Act, as amended. In the event that an attack as herein and therein defined occurs and the New York State Defense Council issues an order applicable to the Exchange authorizing or directing the effectiveness of emergency by-laws of New York corporations, then, notwithstanding any provisions of the certificate of incorporation of the Exchange or the provisions of any of the other Articles of this Constitution or of the rules thereunder, all the rights, powers and duties of the Board shall immediately vest in an emergency committee and continue to be so vested during the period of emergency.

The term ''attack'' for the purpose of this Article means and includes any attack, actual or imminent, or series of attacks by an enemy or a foreign nation upon the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, shellfire, or nuclear, radiological, chemical, bacteriological, or biological means or other weapons or processes.

The term ''emergency committee'' for the purpose of this Article shall mean a committee of six members composed as provided in Section 3 of this Article.

The term ''period of emergency'' for the purpose of this Article shall mean the period commencing with the vesting of the powers of the Board in the emergency committee and ending on the date when the New York State Defense Council declares that the period of attack has ended or on such earlier date as may be fixed (a) by the Board in office at the inception of the emergency or (b) by a majority vote of the membership at a special meeting of the members called for the purpose or (c) by the emergency committee. On the date so declared or so fixed all of the committee's powers shall revert to the Board.

If there are any vacancies in the Board on the date the emergency committee's powers are to revert to the Board, the emergency committee may make such provisions as it deems advisable for the election, by the members of the Exchange, of persons to fill such vacancies and may, in connection therewith, fix the time, place and manner of nominating persons to fill such vacancies and the time and place for a special meeting of the members of the Exchange for the purpose of such election.

Sec. 3. *Composition of Emergency Committee.* The emergency committee shall, at the inception of the period of emergency, be composed of the following six directors who are available and able to meet together—the Chairman of the Board, the Executive Vice Chairman, if one is then in office, each Vice Chairman of the Board then in office, the President, if one is then in office, and such number of the industry directors in order of seniority as are necessary to bring the committee up to its full complement of six. If any of the foregoing are not available or able to meet together, vacancies shall be filled from other members of the Board in order of their seniority. If there are not six members of the Board available and able to meet together, vacancies shall be filled in the order of their seniority, from the industry directors who retired

from the Board at the last annual election. If all of the vacancies cannot be filled from such former directors, they shall be filled in order of seniority, from the industry directors who retired at the next to the last annual election, and so on until there are six such directors or former directors available and able to meet together.

The seniority of a director or former director for the purpose of this Article shall be determined by the length of time he or she has served as a director (including service as Chairman of the Board) whether or not his or her terms of service have been consecutive.

After the emergency committee has been initially constituted as above provided, the committee shall fill any vacancies which occur by appointing directors or former directors of the Exchange, may increase the number of such directors and former directors who constitute the committee, and thereafter may reduce such number, provided the number is not reduced below five. In filling vacancies and in adding members to the committee, seniority shall not control. The emergency committee may remove any member of the committee with or without cause.

In the event that at any time during the emergency there are less than three members of the committee available and able to meet together, the vacancies shall automatically be filled in the same manner as the committee was originally constituted.

Sec. 4. *Meetings of Emergency Committee.* Meetings of the emergency committee shall be held at such times and places as the committee may designate by resolution and special meetings of the committee shall be held on the call of any member of the committee. A member of the emergency committee calling a meeting shall attempt to give notice thereof by making such reasonable efforts as circumstances may permit to notify each committee member of the meeting. Such notification may be oral, written or by publication and specify the purposes thereof. Failure of any member of the committee to receive actual notice of a meeting of the committee shall not affect the power of the committee members present at such meeting to exercise the powers of the emergency committee.

Three members of the emergency committee shall be sufficient to constitute a quorum for any meeting of that committee, and any action taken pursuant to the vote of a majority of the members of the committee present at a meeting shall be deemed to be the action of the committee, even though this Constitution requires a specified vote by the members of the Board had that action been taken by the Board.

Any action by an emergency committee shall be valid and binding as if taken by the Board if such committee certifies that it is the properly constituted emergency committee even though it may subsequently develop that at the time of such action the committee was not a duly qualified emergency committee.

If the emergency committee elects a person to an office which it believes to be vacant, the acts of such newly elected officer shall be valid and binding although it may subsequently develop that such office was not in fact vacant.]

Article XIV

[Amendment of the] *Amendments to* Constitution

Sec. 1. *Constitutional Amendments.* The provisions of Articles *IV (except for Section 14(b)), V (except for Section 2(a)), VI and XII of the Constitution may be amended or repealed, and new provisions may be adopted, by the affirmative vote of a majority of the entire Board, or by the members of the Exchange who are entitled to vote thereon in accordance with the procedure specified in this Article; provided, however, that no Constitutional amendment that may be approved by the majority of the entire Board without the vote of members may take effect until the expiration of two weeks from the date the proposed Constitutional amendment is first furnished to the members. Notwithstanding the foregoing, the Board may make such changes to such proposed amendment as it may deem necessary or appropriate to carry out the intention of such proposed amendment or to make it conform to other provisions of this Constitution or any applicable federal or state law without the need for a further waiting period. The remaining provisions of* this Constitution may be amended or repealed, and new provisions may be adopted, only by the members of the Exchange who are entitled to vote thereon in accordance with the procedure specified in this Article. *To the extent any amendment requires amendment of a definition included in Article I, Section 3, such definition as used in the amended section, may be amended in the same manner as the substantive provision containing such definition.*

Sec. 2. *Proposing Amendments.* Any member of the Board may propose an amendment to this Constitution. Amendments may also be proposed by the signed petition of not less than one hundred and seventy-five members of the Exchange (who would be entitled to vote on the proposed amendment) setting forth the proposed amendment and filing the same with the Secretary of the Exchange who shall present it to the Board at its next regular meeting. Any [such] proposed amendment to this Constitution must be presented in writing at a regular meeting of the Board or at a special meeting expressly called for the purpose of receiving it. Upon presentation, every [proposed] amendment *proposed by the members* shall be laid upon the table for at least two weeks and the Secretary of the Exchange shall promptly cause a copy thereof to be delivered to each director.

After any amendment proposed by the petition of members shall have lain upon the table for two weeks the Board shall, at the next regular meeting of the Board, or at a special meeting called for the purpose, and in any event within seven weeks after the proposed amendment has been presented to the Board, direct that it be submitted, with or without the approval of the Board, to the members entitled to vote thereon (or to all members if required by law) at a special meeting of the members called for the purpose.

In the event that any amendment proposed by one or more directors*,* [is] *and* approved by the affirmative vote of a majority of the entire Board, *requires the vote of the members,* the Board shall direct that it be submitted to the membership for vote thereon (or to all members if required by law) at a special meeting of the members called for the purpose.

With the notice of special meeting, the Secretary of the Exchange shall furnish a form of proxy [designating not less than three] *which shall designate one or more* members of the Exchange [to serve as a proxy committee] *as persons* authorized to act [for the members] *thereunder* at the special meeting. Before submitting any proposed amendment*,* the Board may make such changes therein as it may deem necessary or appropriate to carry out the intention of such proposed amendment or to make it conform to other provisions of this Constitution or any applicable federal or state law.

Sec. 3. *Quorum.* If a quorum shall not be present, in person or by proxy, at the place and time fixed for a special meeting of the members called pursuant to this Article, the meeting shall be adjourned to reconvene at the same time and place on the day two weeks thereafter or, if the Exchange is not open for business on that day, on the next succeeding business day. If a quorum shall not then be assembled, the meeting

shall be dissolved and the proposed amendment shall not become effective. For the adoption of any proposed amendment it shall, except as otherwise required by law or by this Constitution, be authorized by a majority of the votes cast by the members entitled to vote thereon at the special meeting at which it is submitted, provided that a quorum is present, in person or by proxy.

Sec. 4. *Gratuity Fund Amendment.* Notwithstanding the foregoing provisions of this Article, no amendment to this Constitution shall ever be made which will impair in any essential particular, the obligation of each regular member and lessor member to contribute, not less than the sum of $15, to the provision for the families of deceased members, unless such amendment shall be authorized by a unanimous vote, or by the written consent, of all such members of the Exchange.

Article XV

The Gratuity Fund

Sec. 1. *Initial Payment to Gratuity Fund.* Every person who shall become a regular member of the Exchange shall pay to the trustees of the Gratuity Fund the sum of seventy-five dollars before he or she shall be admitted to the privilege of membership. For the purpose of this Article the term member shall mean a regular member and a lessor member and shall not include a lessee member.

Sec. 2. *Contribution on Death of Member.* Each member of the Exchange, by signing this Constitution pledges himself or herself to make, upon the death of a member of the Exchange, a contribution to the family of such deceased member in the respective amount hereinafter set forth according to the length of time that has elapsed between the date when the deceased became a member and the date of his or her death, namely

$15.00 if such elapsed time is less than one year,

$30.00 if such elapsed time is one year or more but less than two years,

$45.00 if such elapsed time is two years or more but less than three years,

$60.00 if such elapsed time is three years or more but less than four years,

$75.00 if such elapsed time is four years or more,

such sums to be paid by the member to the Exchange when assessed. The Treasurer of the Exchange shall pay over monthly to the Gratuity Fund all amounts collected from members under this Article during the preceding month.

Sec. 3. Payments on Death. The faith of the Exchange is hereby pledged to pay, within one year after the proof of death of any member, out of the money collected under the provisions of this Article, the respective amount hereinafter set forth according to the length of time that has elapsed between the date when the deceased became a member and the date of his or her death, namely

$20,000 if such elapsed time is less than one year,

$40,000 if such elapsed time is one year or more but less than two years,

$60,000 if such elapsed time is two years or more but less than three years,

$80,000 if such elapsed time is three years or more but less than four years,

$100,000 if such elapsed time is four years or more,

or so much thereof as may have been collected, to the persons named in the next Section as therein provided, which money shall be a contribution from the other members of the Exchange, free of all debts, charges or demands whatsoever. The elapsed time referred to in Sections 2 and 3 of this Article shall include any period not in excess of 90 days between the transfer of a membership by the deceased member and the acquisition of another membership by such deceased member and, for the purposes of said Sections 2 and 3, the deceased member shall be deemed to have continued to be a member throughout such period.

Sec. 4. To Whom Paid. Should the member die leaving a surviving spouse and no child or children and no issue of a deceased child or children, then the whole sum shall be paid to such surviving spouse for his or her own use.

Should the member die leaving a surviving spouse and a child or children or the issue of a deceased child or children, then one-half shall be paid to the surviving spouse for his or her separate use. The remaining one-half shall be paid to and divided among the child or children and the issue of any deceased child or children, such issue to take per stirpes and not per capita. If any such child or issue shall be a minor, his or her share shall be paid to his or her duly appointed guardian of the property.

Should the member die leaving a child or children or the issue of a deceased child or children and no surviving spouse, then the whole sum shall be paid to the children and such issue as directed in the preceding paragraph to be done with the moiety.

Should the member die leaving neither surviving spouse, child nor issue of a child, then the whole sum shall be paid to the same persons who would, under the laws of the State of New York, take the same by reason of relationship to the deceased member had he or she owned the same at the time of his or her death; and if there be no such person, then the amount applicable under Section 3 of this Article in such case shall be held by the trustees of the Gratuity Fund for the general purposes of that Fund.

The words ''child'' and ''children'' where used in this Section shall, for the purposes of this Article, be deemed to include an adopted child or children of the deceased member, provided, however, that such adoption shall have been in such manner and form that it will be recognized as valid by the courts of the State of New York; the word ''issue'' where so used shall, for such purposes, be deemed not to include an adopted child or children.

In case any person entitled to any gratuity shall be under age and have no guardian entitled to receive payment at the maturity thereof, the trustees may, in their discretion, deposit such money with a bank or other financial institution as the property of, and in trust for, such minor; and in like manner if any person apparently entitled to any payment fails to claim it, or has disappeared or cannot be found after reasonable inquiry, the trustees may deposit the presumptive share of such person with a bank or trust company to the credit of the ''trustees of the Gratuity Fund of the New York Stock Exchange, Inc., in trust,'' to the end that it may be paid to such person, if afterwards found, or otherwise to the parties who may subsequently establish their right thereto; a similar discretion shall apply in the case of any dispute between claimants for a gratuity or a portion thereof.

In all cases a certified copy of the proceedings before a Surrogate or Judge of Probate shall be accepted as proof of the rights of the claimants, shall be deemed ample authority to the Exchange to pay over the money, shall protect the Exchange in so doing, and shall release the Exchange forever from all further claims or liability whatsoever.

Sec. 5. Limited Liability. Nothing herein contained shall ever be taken or construed as a joint liability of the Exchange or its members for the payment of any sum whatever; the liability of each member, at law or equity, being limited to the payment of the dollar amount described in Section 2 of this Article only on the death of any

other member, and the liability of the Exchange being limited to the payment of the dollar amount described in Section 3 of this Article, or such part thereof as may be collected, after it shall have been collected from the members, and not otherwise. Nevertheless, prior to the collection from the members of the amount of any gratuity payable under the provisions of this Article, the trustees may, in their discretion, advance out of the Gratuity Fund (either capital or accumulated income) to the person or persons entitled thereto, the whole or any part of such gratuity; and, in every such case, the amount so advanced shall be repaid to the Gratuity Fund from the payments by the members when collected.

Sec. 6. *No Estate In Esse*. Nothing herein shall be construed as constituting any estate in esse which can be mortgaged or pledged for the payment of any debts; but it shall be construed as the solemn agreement of every member of the Exchange to make a contribution to the family of each deceased member, and of the Exchange, to the best of its ability, to collect and pay over to such family the said contribution.

Sec. 7. *Payments of Excess Net Worth*. As of the close of each quarter in each year, the trustees of the Gratuity Fund shall, provided the net worth of the Gratuity Fund has been determined (as hereinafter provided) to be in excess of the sum of one million five hundred thousand dollars, pay to the Treasurer of the Exchange out of the Gratuity Fund (either capital or accumulated income) a sum equal in amount to such portion, if any, of such excess as shall be the highest whole number multiple of $102,375; if there shall be no whole number multiple of $102,375 in such excess, no such sum shall be paid by the trustees of the Gratuity Fund to the Treasurer of the Exchange with respect to such quarter. As and when such sums are received by the Treasurer of the Exchange they shall be credited proportionately against the first amount then or thereafter payable by members pursuant to Section 2 of this Article.

The ''net worth'' of the Gratuity Fund shall be determined by the trustees at a meeting in the last month of each quarter and shall be that amount by which, as of the close of the month preceding, the total assets (including cash, accounts receivable and investments stated at their market values but exclusive of accrued interest and accrued dividends) exceeded all known liabilities.

Sec. 8. *Deceased, Expelled and Suspended Members*. The provisions of Sections 2, 3, 4, 5 and 6 of this Article shall not extend to the family of any deceased former member whose connection with the Exchange shall have been severed prior to his or her death by the transfer of his or her membership whether such transfer shall have been made by the member or his or her legal representatives or by the Board pursuant to this Constitution, or who has been expelled, but shall extend to the family of a deceased member who was suspended at the time of his or her death.

Sec. 9. *Management of Gratuity Fund*. The management and distribution of the Gratuity Fund shall be under the charge of a board of trustees, acting as agent for the Exchange, to be known as the ''trustees of the Gratuity Fund,'' and shall consist of six regular members of the Exchange who are not lessor members and are elected by the membership. In case of a vacancy among the trustees, the Board, at its next regular meeting thereafter, shall proceed to fill the same until the next annual election of the Exchange. Prior to filling such vacancy, the Board shall request the Nominating Committee to submit to the Board the name of the person recommended by the Nominating Committee to fill such vacancy.

Sec. 10. *Investments*. The Gratuity Fund may be retained by the trustees partially or wholly in the form of cash or, in the discretion of the trustees, may be invested in securities which are legal investments for trust funds under the laws of the State of New York. Any securities held by the trustees which cease to be such legal investments may, nevertheless, in the discretion of the trustees, be retained by them.

Securities held by the trustees may be in coupon or registered form. Securities held in registered form shall be registered in the name of the ''trustees of the Gratuity Fund of the New York Stock Exchange, Inc.'', but without specifying the individual names of such trustees, and may be disposed of and assigned by any four of such trustees.

Sec. 11. *Policies and Procedures of Trustees*. The trustees may adopt such policies and procedures and appoint such officers as they deem appropriate to the discharge of their duties. The trustees shall have power at their discretion to consult and employ legal counsel and they shall be authorized to make disbursements out of the Gratuity Fund to defray necessary and related expenses.

Sec. 12. *Inspection*. The Board shall, at all times, have the right to direct the production before it of the securities belonging to the Gratuity Fund, and all books and records relating to the Gratuity Fund.

Article XVI

2003–04 Transition

The terms of this Article XVI shall apply during the period commencing on the date this amended and restated Constitution is approved by members and ending on the date of the next annual meeting (the ''Transition Period''). Upon expiration of the Transition Period, this Article shall be of no further force or effect.

Sec. 1. Initial Board. The initial board elected concurrently with the approval by the members of this amended and restated Constitution shall be deemed duly nominated, qualified and elected for all purposes.

Sec. 2. Term of Office. The term of each director elected at the special meeting at which this amended and restated Constitution is approved by the members continues until the next annual meeting of members and until his or her successor is elected and qualified.

Sec. 3. Organizational Meeting. The Board shall hold its initial organizational meeting as soon as practicable following the special meeting at which this amended and restated Constitution is approved by the members. At its initial organizational meeting, or as soon thereafter as practicable, the Board, by the affirmative vote of a majority of the entire Board, shall, among such other organizational actions as may be appropriate, appoint the members of the Board of Executives and of the Committees. The terms of the members of the Board of Executives and of the Committees continues until their successors are appointed and qualified.

Sec. 4. Committees. To assure continuity, during the Transition Period, the Regulation, Enforcement & Listing Standards Committee may include prior members of the Committee for Review who are neither directors nor members of the Board of Executives. Such prior members shall be deemed to be members of the Board of Executives for the purpose of Committee voting. In addition, notwithstanding the provisions of Article IV, Section 12(a), the Standing Committees described therein may include as a member the individual serving as Chairman and Chief Executive Officer on the date this amended and restated Constitution is approved by the members.

Sec. 5. Ratification. The extraordinary circumstances under which this restated and amended Constitution was proposed and the initial Board of Directors was constituted caused the Exchange to dispense, in whole or in part, with certain requirements,

including (a) use of the Nominating Committee to nominate directors, (b) the opportunity for members to petition to nominate additional director candidates, and (c) approval of the proposed amendments by the Board of Directors in accordance with the prescribed time frames. All such requirements are hereby waived, and the actions taken in contravention of all such requirements are hereby ratified.

Exhibit B

November 4, 2003

Dear Member:

I am writing to ask your support in reforming the governance and management architecture of the New York Stock Exchange, Inc. This will require that you change the Constitution to achieve the following objectives:

(1) Place responsibility for governance, compensation and internal controls, as well as for supervision of regulation, in the hands of a Board of Directors that is independent both from NYSE management and from the members, member organizations and listed companies.

(2) Separately preserve the existing engagement of the broker-dealer community and listed company community with the NYSE by creating a Board of Executives that will also include the executives of major public and private ''buy side'' entities as well as lessor members.

(3) Make transparent our governance process, its participants, their compensation, and our charitable donations and political contributions.

I also seek ''fast track'' authority from you to effect these changes and enable the new, independent Board to appoint the Board of Executives and to otherwise assume its responsibilities immediately following your vote.

Background

You know the background. The Exchange has evolved over many years, and its Board and management have had to deal with industry, issuer, operational and governance issues of increasing complexity. Recently, we have all been embarrassed by a set of problems that has hurt the Exchange and revealed the clear need to change our structure and processes at the top.

Proposal

I am asking that we reconstitute our Board. It will have between six and twelve members, all of whom will be independent, as well as a Chairman and a Chief Executive Officer (if he or she is not also the Chairman). The directors will be fiduciaries owing their loyalty to the NYSE. The proposed slate is as follows:

(1) Madeleine K. Albright
(2) Herbert M. Allison, Jr.
(3) Euan D. Baird
(4) Marshall N. Carter
(5) Shirley Ann Jackson
(6) James S. McDonald
(7) Robert B. Shapiro
(8) Sir Dennis Weatherstone

If you elect these individuals as your initial Board, they will serve until June 2004. Thereafter, the entire Board will stand for election in June of each year.

It is important that the role and responsibility of the Board be clear and that a mechanism for self-appraisal and continual improvement be in place. This letter and the attached proxy statement describe this for your information—in essence, the Board's responsibilities are to supervise our regulatory function; monitor marketplace performance and competitive position; engage with and approve strategy; hire, fire and pay the management; ensure an appropriate management succession plan; and ensure appropriate behavior.

In order for the NYSE to function effectively and continue as a spokesperson for the industry, the Board and our management must engage with the member owners and with senior voices from our constituents—our listed companies, the buy side and sell side entities, and the trading Floor. To this end:

(1) The Board of Directors will appoint a Board of Executives made up of approximately 20 constituent representatives, balanced among the major broker-dealers, the ''Floor,'' lessor members, institutional investors and large public funds, and listed companies. Members of the Board of Executives will have the same fiduciary duties to the NYSE as its officers have.

(2) The Board of Executives will meet at least six times a year and will discuss Exchange performance, membership issues, listed company issues and public issues relating to market structure and performance.

(3) The Board of Directors will meet with the Board of Executives in joint session several times during each year contemporaneous with its own meetings, and will receive reports of the deliberations of the Board of Executives. Members of the Board of Executives will serve on some of the Committees with members of the Board of Directors.

(4) The Board of Directors will stay in touch with the membership in a variety of ways, including meeting separately at the end of each year with the lessor and Floor representatives on the Board of Executives.

In order to work effectively, the Board of Directors will need to appoint several Committees. Given the Board's small size, it can also simply appoint Committee Chairmen and function as a Committee of the whole.

Each year following its election, the Board will organize itself. As of this writing, I anticipate that the Board will have:

(1) An Audit Committee and a Regulatory Oversight & Regulatory Budget Committee to ensure proper controls and regulatory supervision are in place.

(2) A Human Resources & Compensation Committee to ensure that we have good management that is paid appropriately.

(3) A Nominating & Governance Committee to ensure that the Board of Directors and Board of Executives function well and that appropriate people are nominated for the Board and appointed to the Board of Executives.

The Board will also appoint some of its members to Committees (joint with Board of Executives members) dealing with the Quality of Markets, Market Structure and Strategy, Finance, and appeals of disciplinary actions and de-listings. The Board will create and combine committees as warranted.

Leadership of the Board and Management

The Board will choose a Chairman and a CEO annually in June. If the Board of Directors identifies a person able to lead both it and the Board of Executives and to discharge the functions of chief executive, it may combine the two roles. Otherwise, it will select a different person for each role. I will continue in both roles until the new Board of Directors chooses my successor(s), which I hope will be before the end of this year. I have indicated to the Board nominees my willingness to thereafter remain on the Board, if appropriate.

Transparency

The workings of the Board of Directors and its governance must be transparent. To that end:

(1) Prior to the Annual Meeting, we will publish a proxy statement disclosing the Board Committee charters and the Committee reports on their activities for the year; membership on the Board, on the Board of Executives, and on the various standing and advisory Committees; the facts establishing each Board member's independence, including any non-director relationship between Board members and the NYSE itself and any material relationships among Board members; and Board compensation.

(2) We will publicly disclose information regarding the means by which members and investors may communicate with the NYSE's non-management directors.

(3) The annual report of the Human Resources & Compensation Committee will detail compensation decisions for the top five officers, the existence of any contracts for these individuals and the compensation for the top management team as a whole. The Committee will detail the competitive comparisons and performance judgments that guided their recommendations.

(4) The Nominating & Governance Committee will explain its nominations and make public the procedures that are in place to ensure that appropriate potential nominees are found and considered.

(5) The Board of Directors will detail the considerations that lead to membership on the Board of Executives, and the current membership. A report of the activities of the Board of Executives will be included in the proxy statement.

(6) The various advisory committees of the NYSE will be identified and described, and their members listed in the proxy statement.

(7) An annual report detailing the charitable activities of or on behalf of the Exchange, including the activities of the NYSE Foundation, will be included with the proxy statement.

(8) A report disclosing NYSE political activities, including a list of political contributions made by any NYSE PAC, will be made available prior to the annual meeting.

Rationale

The logic supporting these proposed changes is straightforward.

(1) The NYSE needs a competent, engaged Board without conflicts and dedicated to the NYSE's long-term interests.

(2) The NYSE will not recover its voice and legitimacy as leader of the U.S. capital markets until it is seen as an example of good corporate governance and capable of properly managing its own affairs. An ''insider board'' is not acceptable—not in general and certainly not as a supervisor of our regulatory responsibilities.

(3) The members of the Exchange need to be kept informed of Board decisions and have access to the Board through full disclosure, direct interaction, an annual meeting and an open election of the Board itself.

(4) The NYSE has to be deeply engaged with listed companies and buy and sell side firms, as well as member owners, through substantive, focused interaction.

Engagement on the Proposals

This letter seeks to highlight some of the most important changes that I propose in your governance architecture and the reasons why I recommend them to you.

To assure that you understand my proposals and to afford you the opportunity to ask questions, I plan to hold several meetings in various locations. You are invited to attend any of the following meetings at the location of your choice:

Wednesday, November 5: Washington, DC
Friday, November 7: Boca Raton, Florida
Monday, November 10: Philadelphia, Pennsylvania and New York, New York
Wednesday, November 12: Cleveland, Ohio and Chicago, Illinois
Friday, November 14: Los Angeles, California
Saturday, November 15: San Francisco, California

Please call this toll-free number if you plan to attend and we will give you the details: 1–888–410–7850. You may also contact us via email at *governance@nyse.com.*

Proxy Statement and Ballot

The matters to be acted upon are described more fully in the accompanying Proxy Statement.

I urge you to read it carefully and to vote in favor of the proposals.

If I can have your support, we will have a solid and independent Board of Directors directly elected by the members, and a Board of Executives able to ensure our continued centrality to constituent concerns. This arrangement will serve you, the Exchange itself and most importantly, the investing public.

I ask for your vote.

Best,

/s/ John S. Reed,

John S. Reed.

NEW YORK STOCK EXCHANGE, INC.

11 Wall Street

New York, New York 10005

NOTICE OF SPECIAL MEETING

To be held November 18, 2003

To the Members:

Proposal 1. Amend and Restate the Constitution in the form attached as Annex A.

Proposal 2. Election of eight (8) directors.

Only members of record and in good standing at the close of business on November 18, 2003 will be entitled to vote at this meeting or at any adjournments thereof.

By Order of the Interim Chairman of the Board,

/s/ Darla C. Stuckey

Darla C. Stuckey, *Secretary*

November 4, 2003.

IMPORTANT: To ensure that you are represented at the Special Meeting, please vote in one of these ways:

- **USE THE TOLL-FREE NUMBER shown on your proxy card;**
- **VISIT THE WEBSITE noted on your proxy card to vote via the Internet;**
- **MARK, SIGN, DATE AND PROMPTLY RETURN the enclosed proxy card in the postage-paid express mail envelope to IVS Associates, Inc., 111 Continental Drive, Suite 210, Newark, Delaware 19713, or by FAX to 302–369–8486; OR**
- **VOTE IN PERSON by appearing at the Special Meeting and submitting a ballot at the meeting.**

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NEW YORK STOCK EXCHANGE, INC

The New York Stock Exchange, Inc. is the world's premier equities market. A broad spectrum of participants, including individual investors, institutional investors, listed companies, and members and member organizations, create the NYSE auction market. The NYSE is committed to serving the interests of public investors in equities by maintaining the most efficient, liquid, fair and orderly markets in the world.

The NYSE, founded in 1792, is a New York not-for-profit corporation which was first incorporated in 1971. The NYSE's executive offices are located at 11 Wall Street, New York, New York 10005; telephone: (212) 656–3000.

MEETING AND SOLICITATION

The Proposals

This Proxy Statement is being furnished to NYSE members in connection with the solicitation of proxies for use at a special meeting to be held on November 18, 2003, at 4:30 p.m. New York time, in the Board room at the New York Stock Exchange, Inc., 11 Wall Street, New York, New York 10005 (the ''Special Meeting''). The purpose of this Special Meeting is for you to consider and vote upon a proposal to approve an amended and restated Constitution, which provides for a number of significant changes to the governance of the NYSE, and to elect a new Board of Directors of the NYSE upon adoption of the amended Constitution. If elected, these directors will serve until the next annual meeting of members, scheduled for June 3, 2004.

The Interim Chairman of the Board recommends that you vote FOR the proposal to amend and restate the Constitution and FOR the election of the new Board of Directors. This Proxy Statement and the accompanying proxy card were first sent to members on November 4th, 2003.

Vote of Members; Notice; Quorum

Each regular member in good standing shall be entitled to one vote on the proposal to amend and restate the Constitution and on each position to be filled. Each physical access member in good standing shall be entitled to one vote, and each electronic access member in good standing who became such prior to March 30, 1986 shall be entitled to one-half vote. All members of record in good standing on the date of the mailing of notice are entitled to notice of the Special Meeting and those members in good standing as of the date of such meeting, or at any adjournment, are entitled to vote at the meeting. As of the date of this notice, there are 1365 regular members and 4 physical access members in good standing, and 2 electronic access members in good standing who became such prior to March 30, 1986 (one-half vote each).

The amended and restated Constitution shall be authorized by a majority of the votes cast by the members entitled to vote thereon, in person or by proxy, at the Special Meeting, if a quorum is present. Members entitled to cast a majority of the total number of votes entitled to be cast (1370), present in person or by proxy will constitute a quorum.

Proxies; Revocation

If you vote by signing a proxy, your votes at the Special Meeting will be cast as you indicate on your proxy card. If no instructions are indicated on your signed proxy card, your votes will be cast FOR the approval and adoption of the amended and restated Constitution and FOR the election of the new Board of Directors. If you cast your votes through the Internet or by telephone or fax, your votes will be cast at the Special Meeting as instructed.

You may revoke your proxy at any time before the proxy is voted at the Special Meeting. A proxy may be revoked prior to the vote at the Special Meeting in any of three ways:

- by submitting a written revocation dated after the date of the proxy that is being revoked to the Secretary of the New York Stock Exchange, Inc., 11 Wall Street, New York, NY 10005;
- by submitting a later-dated proxy by mail, telephone, fax or Internet; or
- by attending the Special Meeting and voting by paper ballot in person.

Attendance at the Special Meeting will not, in itself, constitute revocation of a previously granted proxy.

The NYSE will pay the costs associated with printing this Proxy Statement and soliciting proxies for the Special Meeting. Our officers and employees may solicit proxies by telephone, mail, the Internet or in person. We have retained MacKenzie Partners, Inc. to assist us in the solicitation of proxies, using the means referred to above, and will pay fees of up to $15,000, plus reimbursement of out-of-pocket expenses.

Adjournments

If no quorum exists of members present or represented by proxy, the Special Meeting shall be adjourned to reconvene at the same time and place on the day two weeks thereafter by members who are present or represented by proxy. If a quorum shall not then be assembled, the meeting shall be dissolved and the proposed amendment shall not become effective. At the adjourned meeting, if a quorum is present or represented by proxy, the members may transact any business that might have been transacted at the original meeting.

Confidential Voting

It is the Exchange's policy that all proxies, ballots, and voting tabulations, including telephone, Internet and fax voting, that identify members be kept confidential. The Exchange has engaged IVS Associates to count the votes represented by proxies, ballots and cast by phone. Creighton Dunlop and William Marsh, employees of IVS, will be appointed Inspectors. The Exchange will pay IVS a fee of $5,500 plus reasonable out-of-pocket expenses for this service.

THE PROPOSALS

At the NYSE Special Meeting, NYSE members will be asked to vote upon a proposal to amend the Constitution to enhance the NYSE's corporate governance structure. To implement the proposed corporate governance reforms, members will also be asked to vote for the election of directors. Approval of the amendments to the NYSE Constitution is a condition to the election of the nominees for directors. Therefore, if NYSE members wish to approve the new slate of directors, they must also approve the amended and restated Constitution.

Background and Reasons for the Proposals

Recent events have demonstrated that the NYSE's corporate governance structure has not kept pace with either the best practices in corporate governance that have developed over the last three decades or the tremendous changes in the nature of the Exchange's constituents. Just as corporate America is re-examining and improving its own corporate governance in the context of a changing environment, so too must the NYSE.

In March 2003, Securities and Exchange Commission (''SEC'' or ''Commission'') Chairman William H. Donaldson asked the New York Stock Exchange, Inc. and the other self-regulatory organizations to review their corporate governance in light of the broad review of governance practices throughout corporate America, to ensure that their governance structures and practices serve the public well. In April 2003, the NYSE Board created the Special Committee on Governance of the NYSE and charged it with reviewing the NYSE's governance with a view to making appropriate reforms. In June 2003, the Special Committee issued an Initial Report to the Board, which contained ten governance reforms that the Board put into effect immediately.

The Special Committee continued its work through the summer, reaching out to a broad range of individuals and organizations representing investors, listed companies and members. The Special Committee held five days of hearings in which it heard testimony from 32 groups and individuals. It received six additional written

submissions from other interested parties. At the October 2, 2003 Board meeting, the Special Committee presented 33 recommendations for enhancing the NYSE's governance.

Interim Chairman Reed accepted his current position with the goal of revamping the Exchange's governance to resolve conflicts of interests and to increase transparency. He committed the NYSE to complying with the governance standards comparable to those to which its listed companies adhere, and to going beyond those standards in order to meet the special challenges of serving as both a marketplace and a self-regulatory organization.

Following further study, including extensive discussions with the NYSE's varied constituencies and the SEC, Interim Chairman Reed developed the governance structure that forms the basis of the Constitutional amendments: the engaged separation of the Board of Executives (constituent representatives) from the Board of Directors (independent fiduciaries). That approach departs from the approach espoused by the Special Committee, which struggled to retain independent directors and constituent representatives in the same governance body. However, the dual board approach otherwise extends the Special Committee's recommendations: except for five of them that cannot be addressed until the new Board is constituted, all of the Special Committee's recommendations have been incorporated into the proposed amended and restated Constitution, either literally or in concept, or are otherwise reflected in this proxy statement.

Proposal to Amend and Restate the Constitution

The next several pages discuss in more detail than the cover letter many of the important changes that your vote will effect, and also provide collateral information. The amended and restated Constitution reflecting these changes is attached as Annex A to this proxy statement. In addition, attached as Annex B is the amended and restated Constitution marked to reflect the revisions from the existing Constitution. A diagram depicting the separate, but engaged, independent and constituent boards is attached as Annex C. While the cover letter and the discussions below seek to bring to your attention many of the important changes that your vote will effect, members are urged to carefully review the marked Constitution so they will see the specific language used to effect the new governance architecture.

Board Authority and Accountability

The Board of Directors, including its Chair, is ultimately responsible to the members of the Exchange (owners) and to the investing public for the performance of the NYSE. The Chair is specifically responsible for the proper functioning and the performance of the Board. To that end:

Operations

The Board will (a) overview the performance of the Exchange, its relationships with the investor, listed company and broker community and its role as a public voice, (b) overview the performance of the Exchange's responsibility as a regulator of the trading Floor, of the broker-dealer community and of listed companies and its relationship with other regulators, (c) overview management's assessment of the Exchange's exposure to risk, both in its regulatory and business functions, and (d) act as the final approval authority on the budget, with a separate process for the budget and staffing for the regulatory function, on major expenditures, technology spending and plans and rules or relationship changes. With regard to the above, the Board will understand management's plans and aspirations and will be kept current with regard to progress or problems related to them.

Strategy

The Board will be kept apprised of the strategic position of the Exchange and of the many currents impacting on the Exchange's evolution as a business and as a regulator. It will provide advice and counsel to the management and approve plans and decisions impacting this evolutionary pathway.

Behavior

The Board will assure appropriate behavior through the work of the Audit Committee and the Regulatory Oversight & Regulatory Budget Committee and through an annual assessment of management which takes into account both operational performance and its leadership behavior—emphasizing integrity, respect for the people and culture of the Exchange and its public role.

Management

The Board will assess management performance, create and oversee appropriate compensation and recognition practices, and hire/fire individuals in management positions as needed. The Board will ensure that appropriate management succession and development plans are in place and functioning.

Assessment

On an annual basis, in Executive session, the Board will discuss its own performance. It will at least ask each director to indicate (a) if the Board's responsibilities are clear, understood and appropriate, (b) if he/she feels that he/she has appropriate, timely and accurate information to reasonably meet his/her responsibilities, and (c) if the organization of the Board, its agendas, Board membership, time and discussions are appropriate to reasonably meet the Board's responsibilities. In each instance, if there is a negative view, ideas for improvement should be discussed, and, if appropriate, implemented. The process will be documented. Importantly, the Board will have the authority that boards of publicly-owned corporations have to amend its own governance by-laws to effect improvements, subject to a special provision for notice to members of proposed changes. Provided that a director is performing well, there is no need for him or her to face term limits and thereby sacrifice his or her familiarity with our unusual institution and institutional memory.

Board of Executives

Responsibilities

To engage with the senior management and the Board of Directors of the NYSE to review on an ongoing basis (a) Exchange performance, (b) membership issues, (c) listed company issues, and (d) public issues relating to overall market structure and performance.

Functioning

The Board of Executives will meet regularly (to start: six times per year), will populate committees jointly with the Board of Directors, and will engage in an annual self-appraisal to ensure continuing effectiveness comparable to that described above for the Board of Directors. The Board of Executives will be chaired by the NYSE Chair and include the CEO (if different).

Members

Approximately 20, appointed by the Board of Directors of the Exchange. It will be fairly balanced and include (a) executives of the major broker dealers, (b) representatives from the Floor, (c) lessor members, (d) executives of listed companies, and (e) executives of institutional investors and of large public funds. The Nominating &

Governance Committee will solicit input from each constituent group for candidates to represent the group on the Board of Executives.

Governance and Management

The Board of Directors and its Chair are ultimately responsible for the performance of the Exchange, as seen by its owners, the public and its many professional constituencies.

The Chairman is specifically responsible for the proper functioning and performance of the Board.

The Board of Executives is an integral part of the governance process, advising NYSE senior management in both its operational responsibilities and its role as a public spokesperson. The composition, meetings and agenda of the Board of Executives are designed to ensure that the Exchange meets the operational performance requirements of its constituent parties: the Floor community, member organizations, the listed companies and investors, large and small * * * also to provide comment about the regulatory functions—working to ensure that these are tough, but practical and fair * * * and finally, to bring the constituents' point of view to senior management's role as a spokesperson for the U.S. capital markets.

The Board of Directors will meet at least quarterly, and the Board of Executives, at least six times a year. The Board of Directors will join with the Board of Executives on dates when their meetings overlap (probably two to three meetings) and then move to their own Committee and Board sessions.

There are three types of committees: those including directors only (Nominating & Governance, Audit, Regulatory Oversight, and Compensation); those drawn from both boards but with a voting majority of directors (Regulation, Enforcement & Listing Standards); and those drawn from both boards without designated composition (Market Structure & Strategy, Quality of Markets/Public Policy and Finance). All committees will report to the Board.

Each Board and, as appropriate, committee will define a self-assessment procedure which will be appropriately documented. Board processes are expected to improve in response to these assessments.

Below are discussed five areas of particular concern: regulatory function; hiring, firing, compensation and succession; nominations; the engagement of the Board of Directors with the Board of Executives; and engagement with the membership.

Regulatory Function

The proposed architecture provides for a strong, vigorous and independent regulatory function. The Board will hire a Chief Regulatory Officer whose line reporting relationship will be to the Board's Regulatory Oversight & Regulatory Budget Committee. The Board Regulatory Oversight Committee will determine the Exchange's regulatory plan, programs, budget and staffing proposals annually and will be responsible for assessing our regulatory performance and for recommending compensation and personnel actions involving senior regulatory personnel to the Board's Compensation Committee. The CEO's views on the regulatory function, its plans, programs, staffing and budget will be sought, but the Regulatory Oversight Committee's views on regulatory performance will be recommended through the Compensation Committee to the full Board for approval.

Hiring, Firing, Compensation and Succession

The Board of Directors has the responsibility to hire/fire and compensate the NYSE's senior management, and ensure that an appropriate succession plan is in place. The Board's Human Resources & Compensation Committee will keep current on appropriate benchmarks that will inform compensation recommendations and will evaluate the NYSE's performance and that of key individuals and major units each year as a part of the annual review process. Performance will include ''hard measures'' such as market share, listing activities, revenues and expenses, but also ''softer issues'' such as the working environment, culture and morale of the various groups that make up the Exchange, progress that is being made in relationship with the ongoing discussions about market structure and performance, and the relationships of the NYSE with its many constituencies and the SEC. The CEO will interact with the Committee on both compensation and performance (other than his or her own), but the Committee's ultimate decisions will be made in executive session without either management or staff present. The recommendations of the Committee and those that are forwarded from the Regulatory Oversight Committee will be reported to the full Board for its approval.

Nominations

A six to twelve person Board will be composed of individuals who are ''independent'' and owe their loyalty to the NYSE. The Board will set the size of its membership within these parameters and can change the size as appropriate between annual meetings. The Nominating & Governance Committee is responsible for proposing a slate of directors for election by the members, except that two or three nominees will be proposed by the Industry Members of the Board of Executives in order to comply with the requirements of the Securities Exchange Act of 1934 (the ''Act'') regarding the fair representation of members. Nominees will be selected on the basis of their competence to fulfill the duties and responsibilities of a director—however, a special process will be created to solicit potential candidates who are both qualified and independent from the management and from regulated constituents. If such person is nominated and elected he/she becomes a director with all the attendant obligations and duties and in no way can represent any special interests.

Engagement of the Board of Directors With the Board of Executives

Outlined above are the duties, responsibilities and composition of the Board of Directors, of the Board of Executives, and of the Committees, including joint participation on membership and marketplace issues. As the keystone to the engagement between the two boards, the Board of Directors will meet with the Board of Executives from time to time but, in addition, the Board of Directors will always meet alone. Discussion of issues of importance to the industry involving NYSE operations, regulatory issues and listing functions (other than individual disciplinary or delisting cases) will be the subject of Board of Executives meetings, as will be discussions of market structure and performance. The operating (non-regulatory) budget of the NYSE and other financial issues will be the subject of discussion at meetings of the Finance Committee, which is joint, because the NYSE's revenue comes from the constituents represented on the Board of Executives and they should have an appropriate forum to discuss revenues, expenses, and related financial issues (taxation and representation). However, specific proposals that are recommended by the Finance Committee must come to the Board of Directors for ultimate approval, just as recommendations of the Board of Executives about operating issues or strategic issues ultimately are advisory to the Board of Directors (though the weight of judgment and expertise on the Board of Executives will clearly be of importance). In areas where expertise is

clearly at the Board of Executives, the Board of Directors may solicit the advice and expertise of the Board of Executives, but may not delegate ultimate responsibility.

Engagement With the Membership

The proposed architecture recognizes the need to engage fully and substantively with the membership through: (a) The direct election of directors, (b) the ability to propose nominations to the Board through their representatives on the Board of Executives and by direct petition, (c) the ability to require special votes by the membership (including for the recall of directors for cause), (d) their representation on the Board of Executives and on standing Committees, (e) the occasion to meet annually through their representatives with the Board of Directors to bring special concerns of the membership to the attention of the Board, and (f) the ability of members to come to the annual meeting and propose resolutions on that occasion.

Advisory Committees

The Board of Directors will maintain several advisory committees. The advisory committees will consist primarily of constituent representatives not serving on the Board of Executives. Like the Board of Executives, the advisory committees will be organized to represent a range of constituencies, helping the Board of Directors and management to hear regularly from all of the Exchange's constituencies and to maintain a broad perspective on the market and its participants.

By way of example, at present the Individual Investors Advisory Committee, the Institutional Traders Advisory Committee and the Pension Managers Advisory Committee represent various investor interests. The Listed Company Advisory Committee, which represents the views of the U.S. listed companies, has European, Latin American and Pacific Rim counterparts. In addition, a number of advisory committees represent diverse industry interests, such as the Exchange Traders Advisory Committee and the Upstairs Traders Advisory Committee. Finally, the Legal Advisory Committee draws practitioners from law firms and the legal staffs of institutional investors, member organizations and listed companies, as well as law professors.

Other Governance Reforms

In addition to the governance reforms that require Constitutional amendments discussed above, the Exchange will implement other reforms that do not require Constitutional amendment. Certain of these reforms were implemented by the Board in June 2003, based on the recommendation of the Special Committee on Governance of the NYSE. Other reforms were recommended by the Special Committee at the October 2003 Board meeting. The reforms listed below, which meet, and when appropriate, exceed the disclosure requirements imposed on the Exchange's listed companies, are designed to further enhance the transparency and accountability of the Board.

Publication and Disclosure

In addition to the various transparency initiatives that the cover letter notes, the Exchange will:

• Adhere to the SEC's proposed rule regarding director nominating committee responsibilities, including, among other things, disclosure concerning the Exchange's policy regarding consideration of individuals recommended by the public as potential nominees to the Board; the procedures enabling the public to suggest nominees; and the process for identifying and evaluating nominees and any differences in evaluation if the nominee is recommended by the public.

• Periodically update and post on the NYSE's web-site written governance principles and the Exchange's codes of business conduct and ethics.

Governance Procedures and Policy

In addition to the various detail on governance procedure and policy that the cover letter notes:

• The Finance Committee is expected to be responsible for recommending the non-regulatory budget of the Exchange to the Board for its review and approval, and fee changes to the Board of Directors, if appropriate. The Market Structure & Strategy Committee is expected to be responsible for examining issues of the Exchange's market structure and competitive position. Finally, the Quality of Markets Committee is expected to advise the Board on member and listed company rules and oversee the Market Performance Committee and the Allocation Committee.

• The Exchange will prohibit service by NYSE employees on the boards of directors of business corporations. The NYSE's Officers' and Employees' Statement of Business Conduct and Ethics already prohibits such service, but authorizes the Board to waive the provisions (subject to firewalls). Waivers are currently in effect until no later than Spring 2004 with respect to the service of the Presidents on the boards of two public companies.

Other Issues

During the several weeks preceding the mailing of this proxy statement, members have identified a variety of other important issues outside the scope of addressing our governance and process failures. These issues include, among others, proposals for changing the Gratuity Fund, for permitting the transfer of memberships to trusts and other juridical persons, for reducing the number of outstanding trading rights by eliminating the physical access membership or by the Exchange buying back regular memberships, and for separating the trading right from the equity ownership of the Exchange. In some cases, addressing these issues requires amending the Exchange's certificate of incorporation; others raise access issues as to which the SEC can be expected to have strong views. Some of the issues may also be controversial given the current 50/50 split between member owners affiliated with member organizations and those who are not. (The 688 of our 1366 regular members (1/2 is 683) who are not so affiliated are composed of 415 retired members, 35 widows and other relatives of deceased members, 86 estates and 152 members who themselves or their family members have never been so affiliated.)

Each of these issues requires thoughtful consideration by an unconflicted Board. Therefore, these important issues will be placed on the agenda of the new Board for its consideration in the coming months. The directors will report to you on these issues, among others, at the next annual meeting in June 2004.

Note in this connection that, under State law, the NYSE is required to have an annual meeting for the election of directors. While the fact that the entire new Board will stand for election a mere six months after taking office arguably makes elections premature, these elections will provide an early check on the new Board's progress towards implementation of our ambitious restructuring of our governance, as well as its progress in addressing these issues.

''Fast Track'' Issues

The extraordinary circumstances under which the restated and amended Constitution is being proposed and the initial Board of Directors is being constituted caused the Exchange to dispense, in whole or in part, with certain requirements under the current Constitution, including (a) use of the Nominating Committee to nominate

directors, (b) the opportunity for members to petition to nominate additional director candidates, and (c) approval of the proposed amendments by the current Board of Directors in accordance with the prescribed time frames.

In light of these extraordinary circumstances, it is possible that other governance reforms may be appropriate, or that those included in the amended and restated Constitution or in this proxy statement may require modification. The Exchange will have several means of addressing such issues, if they arise, including: (a) amendment of the Constitution by the members, (b) amendment by the Board of those provisions of the Constitution that permit such amendment by the Board, subject to the requirement that the membership be notified in advance, and (c) to the extent consistent with the Constitution, adoption by the Board of appropriate rules, various charters and other ancillary documents.

Effectiveness of Constitutional Amendments

The NYSE is a self-regulatory organization and national securities exchange registered with the SEC pursuant to the Act. The NYSE is required to file with the SEC copies of any proposed rule change, including these Constitutional amendments. Under the Act, unless otherwise permitted, these Constitutional amendments will not take effect until approved by the SEC. The Act provides for public notice of these Constitutional amendments, for public comment, and for specific time periods for SEC action.

PROPOSAL 1—Constitutional Amendments

The Interim Chairman of the Board recommends a vote FOR adoption of the following resolution, which will be presented at the meeting:

RESOLVED, that the recommendation by the Interim Chairman of the Board to amend and restate the Constitution in the form attached as Annex A to this Proxy Statement be and hereby is approved.

PROPOSAL 2—Election of Directors

The Interim Chairman of the Board recommends a vote FOR the election of the following directors:

(1) Madeleine K. Albright
(2) Herbert M. Allison, Jr.
(3) Euan D. Baird
(4) Marshall N. Carter
(5) Shirley Ann Jackson
(6) James S. McDonald
(7) Robert B. Shapiro
(8) Sir Dennis Weatherstone

NOMINEES FOR ELECTION AS DIRECTORS

The number of directors to be elected is eight (8). The designated proxy holders of the Exchange intend, unless otherwise instructed, to vote all proxies for the election of the following eight nominees. If elected, they will hold office until the next annual meeting (June 2004), or until their successors are elected and qualified. Thereafter the Board will stand for election every year. The following provides information about each nominee as of November 4, 2003, including his or her business background.

Name, Principal Occupation and Certain Directorships

MADELEINE K. ALBRIGHT— Age 66.

Dr. Albright served as the 64th Secretary of State of the United States. She was the first female Secretary of State and is the highest-ranking woman in the history of the U.S. government. Her autobiography, *Madam Secretary: A Memoir,* was published in September 2003. Dr. Albright is the founder of The Albright Group LLC, a global strategy firm. Dr. Albright is the first Michael and Virginia Mortara Endowed Distinguished Professor in the Practice of Diplomacy at the Georgetown School of Foreign Service and the first Distinguished Scholar of the William Davidson Institute at the University of Michigan Business School. She is also the Chairman of The National Democratic Institute for International Affairs, Chair of The PEW Global Attitudes Project and President of the Truman Scholarship Foundation. From 1993–1997, Dr. Albright served as the United States Permanent Representative to the United Nations and as a member of the President's Cabinet and National Security Council. In 1995, she led the U.S. delegation to the UN's Fourth World Conference on Women in Beijing, China. Dr. Albright was the Director of Women in Foreign Service Programs and a Research Professor of International Affairs at Georgetown University during the decade prior to her return to public service. From 1989–1992, she was President of the Center for National Policy, a non-profit public policy organization based in Washington D.C. From 1978–81, Dr. Albright was a member of President Carter's National Security Council and White House staff. From 1976–78, she served as Chief Legislative Assistant to U.S. Senator Edmund S. Muskie. Dr. Albright received her B.A. with Honors from Wellesley College, Masters and Doctorate from Columbia University's Department of Public Law and Government, as well as a Certificate from the Russian Institute.

HERBERT M. ALLISON, JR.— Age 60.

Mr. Allison became chairman, president and chief executive officer of Teachers Insurance and Annuity Association and College Retirement Equities Fund (TIAA–CREF) on November 1, 2002. He joined TIAA–CREF after a 28-year career at Merrill Lynch & Co., where he last served as president and chief operating officer. After leaving Merrill Lynch in mid-1999, Mr. Allison served as national finance chairman for Senator John McCain's presidential campaign. Prior to his move to TIAA–CREF, he was president and chief executive officer of the Alliance for Lifelong Learning, a nonprofit venture of Oxford, Stanford and Yale universities. Mr. Allison is currently vice chairman of the United Negro College Fund and serves on the Yale Investment Committee, and on the Advisory Council of the Yale School of Management. President George W. Bush recently appointed him to the board of the Vietnam Education Foundation, a new federal agency, which he now chairs. Mr. Allison is a former board member of the National Association of Securities Dealers and Nasdaq and past chairman of the Stanford Business School Advisory Council. He graduated from Yale College and served as an officer in the U.S. Navy before earning an M.B.A. from Stanford.

EUAN D. BAIRD— Age 66.

Mr. Baird, a native of Aberdeen, Scotland, is the Chairman of Rolls-Royce plc, having been appointed in February 2003. He is also the retired Chairman, President and Chief Executive Officer of Schlumberger. Mr. Baird joined Schlumberger in 1960 as a field engineer and was elected Chairman of the Board, President and Chief Executive Officer in 1986. He retired from Schlumberger in 2003. Mr. Baird currently serves as Trustee of the Carnegie Institution of Washington since 1998; as Trustee of the Tocqueville Alexis Fund (formerly the Haven Fund) since 1994; as a member of the Prime Minister's Council of Science and Technology in the UK since 2000; as a member of the Advisory Committee of Banque de France since November 2001; and on the Boards of ScottishPower, Areva, and Société Générale since 2001; and on the Board of InterContinental Exchange since 2002. He attended Aberdeen University and Trinity College, Cambridge receiving an M.A. in Geophysics from

Cambridge University in 1960. He also received a D.Sc. from Heriot-Watt University in 1999 and LL.D degrees from Aberdeen University in 1995 and Dundee University in 1998.

MARSHALL N. CARTER— Age 63.

Mr. Carter was the Chairman and Chief Executive Officer of the State Street Bank and Trust Company, and of its holding company, State Street Corporation, from 1992–2001. He joined State Street in July 1991, as President and Chief Operating Officer, became Chief Executive Officer in 1992 and Chairman in 1993. A former Marine Corps officer who was awarded the Navy Cross and Purple Heart during two years' service in Vietnam, Mr. Carter served from 1975–1976 as a White House Fellow at the State Department and Agency for International Development. Prior to joining State Street, Mr. Carter was with the Chase Manhattan Bank for 15 years. Mr. Carter is the Chairman of the Board of Trustees of the Boston Medical Center. He is also on the Board of Directors of Honeywell International, Inc. He has previously served on the boards of CEDEL, Euroclear, and National Securities Clearing Corporation, and was the Co-chairman of the U.S. Working Group of Thirty between 1988 and 1995, which developed recommendations for revamping world securities clearance and settlement processes. He was also the Chair of the Massachusetts Governor's Special Advisory Task Force on Logan Airport and Massport following the events of September 11th. Mr. Carter holds a B.S. in civil engineering from the U.S. Military Academy at West Point (1962), an M.S. in operations research and systems analysis from the U.S. Naval Postgraduate School, Monterey, California (1970), and an M.A. in Science, Technology and Public Policy from George Washington University (1976).

SHIRLEY ANN JACKSON— Age 57.

Dr. Jackson is the 18th President of Rensselaer Polytechnic Institute. In 2001, Dr. Jackson became the first African-American woman elected to the National Academy of Engineering. She is also a Fellow of the American Academy of Arts and Sciences and the American Physical Society, and a Life Member of the M.I.T. Corporation (Board of Trustees). She is President-Elect of the American Association for the Advancement of Sciences. Prior to becoming President of RPI in 1999, Dr. Jackson was Chairman of the U.S. Nuclear Regulatory Commission. Previously she was a Theoretical Physicist at the former AT&T Bell Laboratories and a professor at Rutgers University. Dr. Jackson serves on the Executive Committee of the Council on Competitiveness, the Council of the Government-University-Industry Research Roundtable, the U.S. Comptroller General's Advisory Committee for the Government Accounting Office, and formerly served on the Advisory Council for the Department of Energy National Nuclear Security Administration. Dr. Jackson also serves on the Boards of Trustees of Pingry School, Emma Willard School, Rockefeller University, Georgetown University, MIT, Woodrow Wilson Foundation, Brookings Institution, Universities Research Association, and Argonne National Laboratory. Dr. Jackson is a director at Federal Express Corporation, Public Service Enterprise Group Incorporated, Sealed Air Corporation, Marathon Oil Corporation, United States Steel Corporation, Medtronic, Inc., and AT&T. Dr. Jackson holds a Ph.D. in theoretical physics from M.I.T., a B.S. in physics from M.I.T. and 18 honorary doctoral degrees.

JAMES S. MCDONALD— Age 50.

Mr. McDonald is the President and Chief Executive Officer of Rockefeller & Co., Inc. He is also a member of the Board of Directors of Rockefeller & Co., Inc. and Rockefeller Financial Services. Prior to joining Rockefeller & Co., Inc., from 1986 to 2000, Mr. McDonald was a senior officer and director of the Pell, Rudman organization. Among other positions, he served as President and Chief Executive Officer of that organization, now known as ''Atlantic Trust/Pell Rudman.'' Prior to joining Pell, Rudman, he was a partner with the Boston law firm of Choate, Hall & Stewart, which he joined in 1977. In addition, Mr. McDonald is a Trustee Emeritus of the Fessenden School, Newton, Massachusetts (President, 1993–1999), and a member of the Investment Committees of The United States Holocaust Memorial Museum, Washington, D.C., the Nightingale School, New York, N.Y., and the Japan Society of New York. He is a member of the Harvard University Committee on Asia Activities, and has been active in other community activities. He received a J.D. in 1977 from the University of Virginia and an A.B. from Harvard College in 1974.

ROBERT B. SHAPIRO— Age 65.

Mr. Shapiro is the former Chairman and Chief Executive Officer of Monsanto Company and the former Chairman of Pharmacia Corporation. He became Monsanto's President and Chief Operating Officer in 1993; Chairman and Chief Executive Officer in April 1995; and was appointed Chairman of Pharmacia Corporation in April 2000 following the merger of Monsanto Company and Pharmacia and Upjohn, a position he relinquished in February, 2001. Previously, he was Vice President, General Counsel for General Instrument Corporation and served as an attorney with the New York law firm of Poletti, Freidlin, Prashker, Feldman & Gartner. Mr. Shapiro served as Special Assistant to the General Counsel and later to the Undersecretary of the U.S. Department of Transportation. He has served under previous appointments on the President's Advisory Committee on Trade Policy under President Clinton; White House Domestic Policy Review of Industrial Innovation under President Carter; the Civil Aeronautics Board Advisory Committee on Procedure; and the Massachusetts Governor's Task Force on Transportation. Mr. Shapiro is a member of the American Society of Corporate Executives and The Business Council. Mr. Shapiro has received many awards including: the 1999 Emerging Markets CEO of the Year Award, the John R. Miller award as the Outstanding Corporate Marketing Executive in 1984, and the Special Citation for Outstanding Achievement from Sales and Management Magazine. Mr. Shapiro is a graduate of Harvard University and Columbia University School of Law.

SIR DENNIS WEATHERSTONE— Age 72.

Sir Dennis Weatherstone is past Chairman and Chief Executive Officer of J.P. Morgan & Co., having served in those roles from 1990–1994. From 1995–2001 he served as an independent member of the Board of Banking Supervision of the Bank of England (later the Financial Services Authority). He began his career in 1946 at the Guaranty Trust Company. Sir Dennis Weatherstone is an Associate of the Institute of Chartered Secretaries and Administrators and a Fellow of the Chartered Institute of Bankers. He is a Director of Air Liquide and previously General Motors Corporation and Merck & Co., Inc. Sir Dennis Weatherstone is a Director of the Institute for International Economics, a Trustee of the Alfred P. Sloan Foundation, Chairman of the Royal College of Surgeons Foundation in New York, and an Honorary Fellow of the Associate of Corporate Treasurers (London). He was recently elected a Trustee of the International Accounting Standards Committee Foundation.

OTHER MATTERS

The Exchange knows of no matters to be presented at the meeting other than

those included in the Notice preceding this Proxy Statement. If other matters should come before the meeting which require a membership vote, it is intended that the proxy holders will use their own discretion in voting on such other matters.

Annex A & B are not included with this document as filed. The Amended Constitution, market for changes, is attached as Exhibit A to this filing.

The diagram in Annex C is available on the NYSE's website.

Exhibit C

November 4, 2003.

Dear Member: After we ''went to the printers'' with the enclosed proxy statement, we discovered the need to clarify several points on the ''fast track'' authority and the independence of the regulatory function.

First, I neglected to subject to the SEC process my expectation that the new boards would begin operating immediately. While I will immediately begin to work with the new boards, their actions will have no legal effect under the federal securities laws until the SEC approves our new Constitution.

Second, my description in the proxy statement of the interaction of the CEO with the Regulatory Oversight Committee should read: ''The CEO's views on the regulatory function, its plans, programs, staffing and budget may be sought, but the Regulatory Oversight Committee's views on compensating regulatory personnel will be recommended through the Compensation Committee to the full Board for approval.''

Finally, the new Constitution includes provisions to assure the separation and independence of the regulatory function from the Exchange's marketplace function and from inappropriate influence by members and member organizations. To further clarify and underscore this separation, we need to makes some additional changes.

The new Constitution permits your new Board to amend four of its 16 articles. At its organizational meeting, I will present specific language for approval and filing with the SEC. Those further changes will:

- Codify the authority of the Audit Committee to hire its own counsel.
- Clarify that the CEO is recused from Board deliberations on the activities of the Standing Committees specified in Article IV, Section 12(a).
- Clarify that rulemaking on the subjects described in Article IV, Section 14(a) as normally confined to the Board or its committees may, if necessary, be authorized by an officer of the Exchange in between board meetings, subject to informing the Board at its next meeting, and to the approval of the Chief Regulatory Officer if on a regulatory matter.
- Clarify in Article VI, Section 1 that the President does not appoint regulatory officers, and in Section 3 that the CEO's responsibilities are subject to the specific provisions elsewhere in the Constitution regarding the separation of the regulatory functions.

I apologize for the need to supplement the proxy statement, but it is important to make clear to all the independence of our regulatory function under our proposed new architecture.

Best,

John S. Reed.

[FR Doc. 03–28487 Filed 11–10–03; 10:49 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before January 12, 2004.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Reginald B. Teamer, Examiner, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street SW., Suite 6400, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Reginald B. Teamer, Examiner, 202–205–7278 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''SBDC Counseling Record.''

Description of Respondents: Small Business Development Centers.

Form No: 1062.

Annual Responses: 264,000.

Annual Burden: 132,000.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Cynthia Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Program Analyst, 202–205–7570 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''Disaster Business Loan Application.''

Description: Applicants applying for Disaster Loans.

Form No's: 5, 739A, 1368.

Annual Responses: 11,540.

Annual Burden: 28,821.

SUPPLEMENTARY INFORMATION:

Title: ''Disaster Survey Worksheet.''

Description: Applicants who warrant Disaster Declaration.

Form No: 987.

Annual Responses: 4,000.

Annual Burden: 332.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Carol Fendler, Director, Office of Licensing and Program Standards, Small Business Administration, 409 3rd Street SW., Suite 6300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Director, 202–205–7559 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''Request for Information Concerning Portfolio Financing.''

Description: SBIC Investment Companies.

Form No: 857.

Annual Responses: 2,160.

Annual Burden: 2,160.

SUPPLEMENTARY INFORMATION:

Title: ''Financial Institution Confirmation Form''.

Description: SBIC Investment Companies.

Form No: 860.

Annual Responses: 1,500.

Annual Burden: 750.

Title: ''SBIC License Application; Statement of Personal History and Qualification of Management''.

Description: SBIC Investment Companies.

Form No's: 415, 415A.

Annual Responses: 450.

Annual Burden: 14,400.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, 202–205–7528 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''PRIME (Program for Investment in Microentrepreneurs'').

Description: Disadvantaged Microentrepreneurs.

Form No: N/A.

Annual Responses: 500.

Annual Burden: 40,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–28403 Filed 11–12–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4526]

Certification Concerning Restoration of Nondiscriminatory Treatment to Serbia and Montenegro Under Public Law 102–420

Pursuant to the authority vested in me as Secretary of State, including under Section 1(c) of Public Law 102–420, and the President's Delegation of Responsibilities Related to Serbia and Montenegro dated March 22, 2001, I hereby certify that Serbia and Montenegro (1) has ceased its armed conflict with the other ethnic peoples of the region formerly comprising the Socialist Federal Republic of Yugoslavia, (2) has agreed to respect the borders of the six republics that comprised the Socialist Federal Republic of Yugoslavia under the 1974 Yugoslav Constitution; and (3) has ceased all support of Serbian forces inside Bosnia-Hercegovina.

This Certification shall be published in the **Federal Register**, and copies shall be provided to the appropriate committees of the Congress.

Dated: October 31, 2003.

Colin L. Powell,

Secretary of State.

In 1992, Congress enacted Public Law 102–420 withdrawing most favored nation status (now referred to as ''normal trade relations'' or ''NTR'') from Serbia and Montenegro. Pursuant to Public Law 102–420, the President may restore nondiscriminatory treatment to goods that are the product of Serbia or Montenegro 30 days after her certifies to Congress that the conditions set forth in the statute have been met. On March 22, 2001, the President delegated to the Secretary of State authority to make this certification. The certification was notified to Congress on November 4, 2003, and thus normal trade relations status will be restored to Serbia and Montenegro as of December 4, 2003.

[FR Doc. 03–28438 Filed 11–12–03; 8:45 am]

BILLING CODE 4710–10–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–6832. (SC: 0009BL5) Comments should be sent to the Agency Clearance Officer no later than January 12, 2004.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to extend without revisions a currently approved collection of information (OMB control number 3316–0019).

Title of Information Collection: energy right® Residential Program.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Business or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 20,000.

Estimated Total Annual Burden Hours: 6,000.

Estimated Average Burden Hours Per Response: .3.

This information is used by distributors of TVA power to assist in identifying and financing energy improvements for their electrical energy customers.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 03–28398 Filed 11–12–03; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Notice Regarding the 2003 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in September 2003 to review certain practices in certain beneficiary developing countries to determine whether such countries are in compliance with the ATPA eligibility criteria. This notice publishes a list of the September 2003 petitions that were filed in response to the announcement of the annual review.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, Office of the Americas, Office of the United States Trade Representative, 600 17th St., NW., Washington, DC 20508. The telephone number is (202) 395–9446, and the facsimile number is (202) 395–9675.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201 *et seq.*), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210), provides trade benefits for eligible Andean countries. Consistent with Section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of countries for the benefits of the ATPA as amended. The 2003 Annual ATPA Review is the first such review to be conducted pursuant to the ATPA regulations.

In a **Federal Register** notice dated August 14, 2003, USTR initiated the 2003 ATPA Annual Review and

announced a deadline of September 15, 2003 for the filing of petitions (68 FR 48657). Several of these petitions requested the review of certain practices in certain beneficiary developing countries regarding compliance with the eligibility criteria set forth in sections 203(c) and (d) and section 204(b)(6)(B) of the ATPA as amended (19 U.S.C. 3203 (c) and (d); 19 U.S.C. 3203(b)(6)(B))

Pursuant to 15 CFR 2016.1(a), this notice provides a list of the responsive petitions filed pursuant to the announcement of the annual review. Petitions not responsive to the September 2003 notice will not be considered in this review. The list of petitions sets forth the petitioner, country, and subject matter of the practice in question for each petition. The results of the preliminary review of these petitions will be published in the **Federal Register** at a later date. Subsequently, any modifications to the list of beneficiary developing countries or eligible articles resulting from this review will be published in the **Federal Register**.

Bennett M. Harman,

Deputy Assistant United States Trade Representative for Latin America.

ANDEAN TRADE PREFERENCE ACT (ATPA), STATUS OF COUNTRY PRACTICE PETITIONS AND ONGOING REVIEWS

Petitioner	Country	Matter
AFL–CIO	Ecuador	Worker Rights.
Big 3 Marine	Peru	Expropriation.
Duke Energy	Ecuador	Contract Nullification.
Duke Energy	Peru	Contract Nullification.
Engelhard	Peru	Tax Issues.
Human Rights Watch	Ecuador	Worker Rights.
LeTourneau	Peru	Expropriation.
Nortel Networks	Colombia	Contract Nullification.
PhRMA	Ecuador	Intellectual Property Rights.
PhRMA	Peru	Intellectual Property Rights.
Princeton Dover	Peru	Tax Issues.
US/LEAP	Ecuador	Worker Rights

[FR Doc. 03–28391 Filed 11–10–03; 8:45 am]
BILLING CODE 3190–W3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

North American Free Trade Agreement; Invitation for Applications for Inclusion on the Chapter 19 Roster

AGENCY: Office of the United States Trade Representative.

ACTION: Invitation for applications.

SUMMARY: Chapter 19 of the North American Free Trade Agreement (''NAFTA'') provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty (''AD/CVD'') proceedings and amendments to AD/CVD statutes of a NAFTA Party. The United States annually renews its selections for the Chapter 19 roster. Applications are invited from eligible individuals wishing to be included on the roster for the period April 1, 2004 through March 31, 2005.

DATES: Applications should be received no later than December 4, 2003.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0403@ustr.gov,* Attn: ''Chapter 19 Roster Applications'' in the subject line, or (ii) by fax to Sandy McKinzy at 202–395–3640.

FOR FURTHER INFORMATION CONTACT: Stanford K. McCoy, Assistant General Counsel, Office of the United States Trade Representative, (202) 395–3581.

SUPPLEMENTARY INFORMATION:

Binational Panel Reviews Under NAFTA Chapter 19

Article 1904 of the NAFTA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one NAFTA Party with respect to the products of another NAFTA Party. Binational panels decide whether such AD/CVD determinations are in accordance with the domestic laws of the importing NAFTA Party, and must use the standard of review that would have been applied by a domestic court of the importing NAFTA Party. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a three-member extraordinary challenge committee, selected from a separate roster composed of fifteen current or former judges.

Article 1903 of the NAFTA provides that a NAFTA Party may refer an amendment to the AD/CVD statutes of another NAFTA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade (''GATT''), the GATT Antidumping or Subsidies Codes, successor agreements, or the object and purpose of the NAFTA with regard to the establishment of fair and predictable conditions for the liberalization of trade. If the panel finds that the amendment is inconsistent, the two NAFTA Parties shall consult and seek to achieve a mutually satisfactory solution.

Chapter 19 Roster and Composition of Binational Panels

Annex 1901.2 of the NAFTA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 19 binational panels, with each NAFTA Party selecting at least 25 individuals. A separate five-person panel is formed for each review of a final AD/CVD determination or statutory amendment. To form a panel, the two NAFTA Parties involved each appoint two panelists, normally by drawing upon individuals from the roster. If the Parties cannot agree upon the fifth panelist, one of the parties, decided by lot, selects the fifth panelist from the roster. The majority of individuals on each panel must consist of lawyers in good standing, and the chair of the panel must be a lawyer.

Upon each request for establishment of a panel, roster members from the two involved NAFTA Parties will be requested to complete a disclosure form, which will be used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the

roster member and, if applicable, clients of the roster member's firm.

Criteria for Eligibility for Inclusion on Chapter 19 Roster

Section 402 of the NAFTA Implementation Act (Pub. L. 103–182, as amended (19 U.S.C. 3432)) (''Section 402'') provides that selections by the United States of individuals for inclusion on the Chapter 19 roster are to be based on the eligibility criteria set out in Annex 1901.2 of the NAFTA, and without regard to political affiliation. Annex 1901.2 provides that Chapter 19 roster members must be citizens of a NAFTA Party, must be of good character and of high standing and repute, and are to be chosen strictly on the basis of their objectivity, reliability, sound judgment, and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with any of the three NAFTA Parties. Section 402 also provides that,to the fullest extent practicable, judges and former judges who meet the eligibility requirements should be selected.

Procedures for Selection of Chapter 19 Roster Members

Section 402 establishes procedures for the selection by the Office of the United States Trade Representative (''USTR'') of the individuals chosen by the United States for inclusion on the Chapter 19 roster. The roster is renewed annually, and applies during the one-year period beginning April 1 of each calendar year.

Under Section 402, an interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the Chapter 19 Roster. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, USTR selects the final list of individuals chosen by the United States for inclusion on the Chapter 19 roster.

Remuneration

Roster members selected for service on a Chapter 19 binational panel will be remunerated at the rate of 800 Canadian dollars per day.

Applications

Eligible individuals who wish to be included on the Chapter 19 roster for the period April 1, 2004 through March 31, 2005 are invited to submit applications. Persons submitting applications may either send one copy by fax to Sandy McKinzy at 202–395–3640, or transmit a copy electronically to *FR0403@ustr.gov,* with ''Chapter 19 Roster Applications'' in the subject line. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who made submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Applications must be typewritten, and should be headed ''Application for Inclusion on NAFTA Chapter 19 Roster.'' Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and email address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.
7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, concerning AD/CVD law. Judges or former judges should list relevant judicial decisions. Only one copy of publications, testimony, speeches, and decisions need be submitted.
10. Summary of any current and past employment by, or consulting or other work for, the United States, Canadian, or Mexican Governments.
11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.,* and the dates of all registration periods.
12. List of proceedings brought under U.S., Canadian, or Mexican AD/CVD law regarding imports of U.S., Canadian, or Mexican products in which the applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian, or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.
13. A short statement of qualifications and availability for service on Chapter 19 panels, including information relevant to the applicant's familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.
14. On a separate page, the names, addresses, telephone, and fax number of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with international trade law.

Current Roster Members and Prior Applicants

Current members of the Chapter 19 roster who remain interested in inclusion on the Chapter 19 roster must submit updated applications. Individuals who have previously applied but have not been selected may reapply. If an applicant, including a current or former roster member, has previously submitted materials referred to in item 9, such materials need not be resubmitted.

Public Disclosure

Applications normally will be subject to public disclosure. An applicant who wishes to exempt information from public disclosure should follow the procedures set forth in 15 CFR 2003.6.

False Statements

Pursuant to section 402(c)(5) of the NAFTA Implementation Act, false statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the Chapter 19 roster or for appointment to binational panels, are subject to criminal sanctions under 18 U.S.C. 1001.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act (''PRA'') that has been approved by the Office of Management and Budget (''OMB''). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish voluntarily to apply for nomination to the NAFTA Chapter 19 roster. It is expected that the collection of information burden will be under 3 hours. This collection of information contains no annual reporting or recordkeeping burden. This collection

of information was approved by OMB under Control Number 0350–0009. Please send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the above e-mail address or fax number.

Privacy Act

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). The authority for request information to be furnished is section 402 of the NAFTA Implementation Act. Provision of the information requested above is voluntary; however, failure to provide the information will preclude your consideration as a candidate for the NAFTA Chapter 19 roster. This information is maintained in a system of records entitled ''Dispute Settlement Panelists Roster.'' Notice regarding this system of records was published in the **Federal Register** on November 30, 2001. The information provided is needed, and will be used by USTR, other federal government trade policy officials concerned with NAFTA dispute settlement, and officials of the other NAFTA Parties to select well-qualified individuals for inclusion of the Chapter 19 roster and for service on Chapter 19 binational panels.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–28390 Filed 11–12–03; 8:45 am]

BILLING CODE 3190–W3–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Thorn Creek to Moscow, ID

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Latah County, Idaho.

FOR FURTHER INFORMATION CONTACT: Russell L. Jorgenson, Field Operations Engineer, Federal Highway Administration, 3050 Lakeharbor Lane, Suite 126, Boise, Idaho 83703, telephone: (208) 334–9180; or Zachary Funkhouser, Senior Environmental Planner, Idaho Transportation Department, P.O. Box 837, Lewiston, ID 83501, telephone (208) 799–5090.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Idaho Transportation Department, will prepare an EIS on a proposal to improve U.S. Highway 95 south of Moscow, Idaho. The proposed highway alternatives vary in length from 6.1 to 7.4 miles in length and will provide four travel lanes. The termini for the project are from the intersection at Thorn Creek Road on the southern end to the South Fork Palouse River Bridge on the north end.

This improvement is considered necessary to relieve current and projected traffic congestion on U.S. Highway 95 and to address high accident locations. Alternatives under consideration include (1) taking no action, (2) updating and improving the existing alignment, (3) alternatives east of existing U.S. 95, and (4) alternatives west of existing U.S. 95.

Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal, State and local agencies and citizens who have previously expressed interest in this proposed project. Scoping will begin with the publication of the Notice of Intent. As part of the scoping process, public information meetings will be held in addition to public hearings. Public notice will be given of the time and place of any public information meetings and the public hearings. The draft EIS will be made available in electronic format for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or ITD at the addresses provided above.

Authority: 23 U.S.C. 315; 23 CFR 771.123; 49 CFR 1.48.

Issued on: November 5, 2003.

Pamela S. Cooksey,

Assistant Division Administrator, Federal Highway Administration, Boise, Idaho.

[FR Doc. 03–28429 Filed 11–12–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–03–16456 (PDA–30(R)]

Houston, Texas Requirements on Storage of Hazardous Materials During Transportation

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to submit comments on an application by Societé Air France for an administrative determination whether Federal hazardous material transportation law preempts requirements of the City of Houston, Texas, relating to the interim storage of hazardous materials during transportation.

DATES: Comments received on or before December 29, 2003, and rebuttal comments received on or before February 11, 2004, will be considered before an administrative determination is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at *http://dms.dot.gov.*

Comments must refer to Docket No. RSPA–03–16456 and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at *http://dms.dot.gov,* and click on ''Help'' to obtain instructions. You may also sign up on DOT's DMS ''List Serve'' on this website. This service will automatically notify you when certain documents are put into a docket that is of interest to you.

A copy of each comment must also be sent to (1) Michael F. Goldman, Esq., Silverberg, Goldman & Bikoff, L.L.P., 1103 30th Street, NW., Suite 120, Washington, DC 20007, counsel for Societé Air France, and (2) Randy Rivin, Esq., Legal Department, City of Houston, P.O. Box 1562, Houston, TX 77251–1652. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I certify that copies of this comment have been sent to Messrs. Goldman and Rivin at the addresses specified in the **Federal Register**.'')

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.*

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel, at *http://rspa-atty-dot.gov.* A paper copy of this list and index will be provided at no cost upon request to Mr. Hilder, at the address and telephone number set forth **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone No. 202–366–4400.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

Societé Air France (Air France) has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* preempts permit requirements contained in the Fire Code of the City of Houston (Fire Code) and additional secondary containment and segregation requirements imposed by the Houston Fire Department (HFD), as the HFD applies those requirements to the handling or storage of hazardous materials by Air France at George Bush Intercontinental Airport (IAH). The specific provisions of the Fire Code challenged by Air France are the following:

A. Permits

1. Sections 105.8.h.1 and 8001.3.1, which require a permit to store, transport on site, dispense, use or handle hazardous materials in excess of certain ''exempt'' amounts listed in Table 105–C of the Fire Code.

2. Sections 105.8.f.3 and 7901.3.1, which require a permit to store, handle, transport, dispense, or use flammable or combustible liquids in excess of the amounts specified in § 105.8.f.3.

3. Sections 8001.3.2 and 8001.3.3, which specify that the HFD chief may require an applicant for a permit to provide a hazardous materials management plan (HMMP) and a hazardous materials inventory statement (HMIS), respectively, in accordance with the provisions of Appendix II–E of the Fire Code.

B. Containment

1. Sections 8003.1.3.3 and 7901.9, which require secondary containment in buildings, rooms or areas used for storage of hazardous materials and flammable or combustible materials, respectively, in excess of specified quantities.

2. Sections 8001.10.6, 8001.11.8, 7902.1.6, and 7902.5.9, which contain provisions on the use of storage cabinets to increase exempt amounts of hazardous materials or to separate incompatible materials.

According to Air France, it transports cargo on both passenger-carrying and all-cargo aircraft between IAH and Paris, France and, since 1979, it has received an annual permit from the HFD to handle and store hazardous materials at its IAH cargo facility. It states that the hazardous materials stored at IAH ''are in transit * * * under active shipping papers (air waybills) and are only present there incidental to prior or subsequent air transportation,'' and where ''palletization and other procedures related to their carriage by air'' take place. It stresses that ''hazardous materials typically spend only a very short period of time at the Air France cargo facility,'' and that ''Air France is unable to predict what hazardous materials it may have in its facility at any given time since this is a function of the hazardous materials that its customers choose to ship.''

Air France states that, beginning in June 2002, the HFD has required it to submit a Hazardous Materials Management Plan (HMMP) and a Hazardous Materials Inventory Statement (HMIS) in order to obtain a permit, both of which require extensive information. It relates that the HFD refused to accept the HMMP and HMIS submitted by Air France until June 2003, and, during the interval, the HFD cited the local Air France cargo manager for several violations of the Fire Code including the alleged failure to provide a proper HMIS for the storage of hazardous materials and the alleged failure to post the required local permit for the storage, handling or use of flammable liquids.

Air France also states that it moved into a new cargo warehouse facility at IAH in July 2003, where, as a condition of issuing a certificate of occupancy, the HFD has required the installation of ''a hazardous materials storage cabinet * * * for the storage by Air France of certain in transit hazardous materials.'' Air France indicates it operates cargo warehouses at six other locations in the United States, and none of these jurisdictions requires it to obtain a local permit or install and use storage cabinets when it handles and stores hazardous materials in the course of transportation.

As Air France notes in its application, in a prior proceeding, RSPA considered permit requirements in Section 105 and Articles 79 and 80 of the Fire Code relating to the transportation of flammable liquids and other hazardous materials. Preemption Determination (PD) No. 14(R), Houston, Texas Fire Code Requirements on the Storage, Transportation, and Handling of Hazardous Materials, 63 FR 57606 (Dec. 7, 1998), decision on petition for reconsideration, 64 FR 33949 (June 24, 1999). The version of the Fire Code then in effect stated that it was primarily directed at ''the hazards of fire and explosion arising from the storage, handling, and use of hazardous substances, materials and devices, and from conditions hazardous to life and property in the *use and occupancy of buildings and premises.*'' 63 FR at 67507 (quoting from Sec. 101.2 [''Scope''], emphasis supplied). Based on representations of the City of Houston (City) that it did not require permits, apply its definition of ''hazardous materials,'' or apply its tank design requirements to vehicles ''meeting DOT requirements,'' RSPA found that challenges to these provisions in the Fire Code ''have become moot.'' 63 FR at 67510.

In PD–14(R), RSPA discussed the general principle that

> the transportation of hazardous materials in commerce subject to the Federal hazardous material transportation law and the HMR includes the storage of these materials ''incidental to [their] movement.'' 49 U.S.C. 5102(12). Accordingly, RSPA has stated that HMR clearly apply to ''transportation-related storage.'' IR–19, Nevada Public Service Commission Regulations Concerning Transportation of Hazardous Materials, 52 FR 24404, 24409 (June 30, 1987), decision on appeal, 53 FR 11600 (Apr. 7, 1988). And RSPA reiterated in PDs 8(R)–11(R) that the HMR apply to ''[s]torage that is incidental to transportation,'' which includes ''storage by a carrier between the time a hazardous material is offered for transportation and the time it reached its intended destination and is accepted by the consignee.'' 60 FR [8774] at 8778 [(Feb. 15, 1995)]. *See also* PD–12(R), New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Waste, 60 FR 62527, 62541 (Dec. 6, 1995), decision on petition for reconsideration, 62 FR 15970,1 5971 (Apr. 3, 1997) (''transportation-related

activities'' include the interim storage of hazardous materials at a transfer facility).

Id. RSPA also explained that, when a State or local permit is required ''for a facility where hazardous materials are stored in transportation,'' preemption depends on what is required to obtain the permit. *Id.* RSPA has found that the Federal law preempts these permit requirements when the underlying conditions are ''so open-ended and discretionary that they authorize the [State] to approve storage prohibited by the HMR or prohibit storage authorized by the HMR,'' *id.* quoting from Inconsistency Ruling (IR) No. 19, 52 at 24410, and ''unfettered discretion * * * with respect to approval or disapproval of storage of hazardous materials incidental to the transportation thereof is inconsistent with the HMTA and the HMR,'' *id.,* quoting from IR–28, San Jose Restrictions on the Storage of Hazardous Materials, 55 FR 8884, 8890 (Mar. 8, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992). In IR–28, RSPA found that an in-transit permit requirement is preempted when it requires the submission of a HMMP and HMIS and stated that:

> detailed information required to be provided concerning the identity and quantity of hazardous materials (and other materials) which is transportation carrier might store at its facility during a given year is impossible to compile and provide in advance because a common carrier is at the mercy of its customers, including the general public, who may without advance notice offer to the carrier virtually any quantity of any of the thousands of hazardous materials listed in, or covered by, the HMR.

Id., quoted at 64 FR at 33952.

In PD–14(R), the City asked RSPA to postpone any decision pending issuance of a final rule in Docket No. RSPA–98–4952 (HM–223), ''Applicability of the Hazardous Materials regulations to Loading, Unloading, and Storage.'' *See* 63 FR at 67507, 64 FR at 33951. RSPA declined to do so, but noted the City's concerns about ''in-transit facilities'' and the stated interest of the HFD ''that the same fire protection standards apply to both (1) the buildings and other facilities where hazardous materials are stored for short times in the course of transportation and (2) the facilities where hazardous materials are stored and used outside of transporation.'' 64 FR at 33951.

In the recently-issued final rule in HM–223, RSPA has reaffirmed that ''storage incidental to movement of a hazardous material'' is a ''transportation function,'' and the HMR apply to the ''[s]torage if a * * * package containing a hazardous material by any person between the time that a carrier takes possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document, package marking, or other medium * * *'' 49 CFR 171.1(c)(4), as added in 68 FR 61906, 61938 (Oct. 30, 2003); ''*see also*'' the definition of ''storage incidental to movement'' added to § 171.8. *Id.* at 61940–41. RSPA also reaffirmed in new § 171.1(f)(1) that State and local requirements may apply to a ''facility at which pre-transportation or transportation functions are performed,'' but that those State and local requirements remain subject to preemption under the criteria set forth in 49 U.S.C. 5125 (discussed in part II, below). *Id.* at 61938.

As stated in the preamble to the final rule,

> Unless the Secretary waives preemption, the preemption provisions of Federal hazmat law effectively preclude State, local, and tribal governments from regulating transportation functions, as defined in this final rule, in a manner that differs from the Federal requirements if the non-Federal requirement is not authorized by another Federal law and the non-Federal requirement fails the dual compliance, obstacle, or covered subject test. Examples of such transportation functions include:* * * (4) storage of a hazardous material between the time that a carrier takes possession of the material until it is delivered to its destination as indicated on shipping documentation.

Id. at 61924. Thus, ''the definitions adopted in this final rule permit other Federal agencies, States, and local governments to exercise their legitimate regulatory roles at fixed facilities,'' but, as expressed in one comment in the HM–223 rulemaking proceeding, ''[u]niformity, clarity, and consistency are essential when addressing the * * * storage of hazardous materials in intrastate and interstate commerce.'' *Id.* at 61915. In this regard, RSPA has not broken new ground in HM–223 but simply set forth principles ''consistent with previous administrative determinations and letters of interpretation concerning the applicability of the HMR to hazardous materials stored incidental to movement.'' *Id.*, at 61919.

In PD–14(R), RSPA addressed the provisions in the prior edition of the Fire Code that excepted the ''[t]ransportation of flammable and combustible liquids when in accordance with DOT regulations on file with and approved by DOT'' (In Sec. 7901.1.1), and for ''[o]ff site hazardous materials transportation in accordance with DOT requirements'' (in Sec. 8001.1.1). 63 FR at 67507, 67510, 64 FR at 33950, 33951. The current edition of the Fire Code has retained the exception in Sec. 7901.1.1 with respect to flammable and combustible liquids, but eliminated the previous exception in Sec. 8001.1.1. Accordingly, to the extent that flammable and combustible liquids are stored in the course of transportation, they cannot be considered subject to any requirements in Article 79 of the Fire Code. 63 FR at 67510, 64 FR at 33951. The Fire Code also contains ''exceptions'' in Secs. 105.8.f.3, 105.8.h.1, and 7901.3.1 that ''A permit is not required for any activity when the requirement of local permits is preempted by federal or state law.''

The text of Air France's application is set forth in Appendix A, and the complete application including the exhibits is available in the Dockets Office, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, and on-line through the home page of DOT's Docket Management System, at *http://dms.dot.gov.* A copy of the exhibits will be provided without charge upon request to Mr. Hilder (*see* **FOR FURTHER INFORMATION CONTACT** above).

In summary, Air France argues that both (1) the requirements to submit an HMMP and HMIS in order to obtain a permit to store hazardous materials at IAH for a short period in the course of transportation and (2) the requirement to store these materials in storage cabinets during the time they are at IAH create obstacles to accomplishing and carrying out the HMR because of the potential for unnecessary delay or diversion in their transportation for the reasons set forth in prior inconsistency rulings, preemption determinations, and court decisions. Air France also argues that the requirement for storage cabinets does not advance the safe transportation of hazardous materials because (1) it is not applied in the same manner to non-transportation facilities at which the same materials are stored, (2) it increases the number of times hazardous materials are handled, increasing the risk of an accident or incident, and (3) it conflicts with the HMR's requirements for separation and segregation of hazardous materials.

II. Federal Preemption

Section 5125 or 49 U.S.C. contains express preemption provisions that are relevant to this proceeding. 66 FR at 41933–34. As amended by Section 1711 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2319), 49 U.S.C. 5125(a) provides that—in the absence of a waiver of preemption by DOT under § 5125(e) or specific

authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if

(1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible; or

(2) The requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria that RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects is preempted—unless authorized by another Federal law or DOT grants a waiver of preemption—when the non-Federal requirement is not ''substantively the same as'' a provision of Federal hazardous material transportation law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by the Secretary of Homeland Security:

(A) The designation, description, and classification of hazardous material.

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted.'' 49 CFR 107.202(d).

Last year's amendments to the preemption provisions in 49 U.S.C. 5125 reaffirmed Congress's long-standing view that a single body of uniform Federal regulations promotes safety (including security) in the transportation of hazardous materials. Almost 30 years ago, when it was considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it expanded the preemption provisions in 1990, Congress specifically found that:

(3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 2, 104 Stat. 3244. (In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745.) A United States Court of Appeals has found that uniformity was the ''linchpin'' in the design of the Federal laws governing the transportation of hazardous materials. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to RSPA to make determinations of preemption, except for those that concern highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.53(b).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 CFR 107.209. A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(g)(1). A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism.'' 64 FR 43255 (August 10, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

IV. Public Comments

All comments should be limited to whether 49 U.S.C. 5125 preempts the Houston requirements in the Fire Code and imposed by HFD for permits, secondary containment, and segregation, as applied to hazardous materials handled and stored by an air carrier at an airport during transportation. Comments should specifically address the preemption criteria detailed in Part II, above, and set forth in detail the manner in which these requirements are applied and enforced.

Issued in Washington, DC on November 4, 2003.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

Appendix A

Application of Societé Air France for a Preemption Determination

Pursuant to 49 CFR 107.203 and 49 U.S.C. 5125, Societé Air France (''Air France'') hereby applies for a determination that certain permit requirements contained in the Fire Code of the City of Houston, as well as certain secondary containment and segregation requirements imposed by the Houston Fire Department, are preempted under Federal hazardous materials transportation law as these requirements are being applied to the handling or storage by Air France of hazardous materials incidental to their movement by air at the Air France cargo facility at George Bush Intercontinental Airport (''IAH''), Houston, Texas.

I. Local Ordinances and Requirements at Issue

Air France seeks a Department determination that the following local Houston Fire Code and Fire Department requirements are preempted:

1. *§ 105.8.h.1 and § 8001.3.1. of the Fire Code*—requirement for a local permit to handle or store hazardous materials.

2. *§ 8001.3.2. and Appendix II–E of the Fire Code*—requirement that carriers must submit a Hazardous Materials Management Plan (''HMMP'') as specified therein in support of a § 105.8.h.1. and § 8001.3.1 permit application.

3. *§ 8001.3.3 and Appendix II–E of the Fire Code*—requirement that carriers must submit a Hazardous Materials Inventory Statement (''HMIS'') as specified therein in support of a § 105.8.h.1 and § 8001.3.1 permit application.

4. *§ 105.8.f.3 and § 7901.3.1 of the Fire Code*—requirement for a local permit to handle or store flammable or combustible liquids.[1]

5. *§ 8001.10.6 § 8001.11.8, § 7902.5.9 and § 7902.1.6 of the Fire Code and requirements imposed under the Lynxs/Air France Agreement*—requirements for the use of hazardous materials storage cabinets.

6. *§ 8003.1.33 and § 7901.8 of the Fire Code*—requirements for the secondary containment of hazardous materials liquids and solids.

These local Houston requirements are inconsistent with Federal hazardous materials law and specific provisions of the Hazardous Materials Regulations (''HMR''), 49 CFR part 171–180, enforced by the Department and adhered to by Air France in its United States operations, including those conducted at IAH in Houston, Texas.

II. Statement of Facts

Air France is a foreign air carrier licensed and regulated by the United States Department of Transportation (''DOT'' or ''Department'') and is authorized to transport air cargo between points in the United States and points in France. Air France has been providing cargo air transportation, including the transportation of hazardous materials, at IAH since 1969. Currently, Air France operates a daily passenger/cargo combination flight and an all-cargo flight three times per week between IAH and Paris, France.

Air France has applied for and received a permit from the Houston Fire Department to handle or store hazardous materials on an annual basis since 1979 in connection with its IAH cargo warehouse. On June 11, 2002, Air France received the paperwork from the Houston Fire Department to renew its permit to handle or store hazardous materials. On this occasion, Air France was required *for the first time* to submit tow additional items to renew its permit: (1) a HMMP and (2) a HMIS. Air France had never been asked to provide these items on any other occasion when renewing its local permit to store or handle hazardous materials.

The City of Houston has adopted the 1997 edition of the Uniform Fire code, with certain amendments (''Fire Code'').[2] The requirement for a permit to handle or store hazardous materials over certain amounts is found in § 105.8.h.1 of the Fire Code. This section also contains a general exception which states ''EXCEPTION'': A permit is not required for any activity where the requirement of local permits is preempted by Federal or State law.[3] In addition, Article 80—Hazardous Materials states that ''[p]ermits are required to store, dispense, use or handle hazardous material in excess of quantities specified in Section 105, Permit h.1.'' [4] Article 80 further provides that, when required by the fire chief, and applicant for a permit is required to submit a HMMP and a HMIS.[5] Fire Code § 105.8.f.3 and § 7901.3.1 of Article 79—Flammable and Combustible Liquids also require a permit to handle or store flammable or combustible liquids in excess of certain amounts. Both of these sections also provide for an exception where the requirement of a local permit is preempted by Federal or State law.

Appendix II–E, § 2.1 of the Fire code requires that the HMIS list by hazard class all hazardous materials stored in a building and include the following information for each hazardous material listed: (1) Hazard class; (2) common or trade name; (3) chemical name, major constituents and concentrations if a mixture. If a waste, the waste category; (4) Chemical Abstract Service number found in 29 CFR; (5) whether the material is pure or a mixture and whether the material is a solid, liquid or gas; (6) maximum aggregate quantity stored at any one time; and (7) storage conditions related to the storage type, temperature and pressure. An amended HMIS is required to be provided within 30 days of the storage of any hazardous materials which changes or adds a hazard class or which is sufficient in quantity to cause an increase in the quantity that exceeds 5 percent for any hazard class.[6] Pursuant to Column 6.2 of Section II of Figure A–II–E–1 (Sample Format) contained in Appendix II–E, an applicant is also required to estimate the average daily amount of hazardous material on site during the past year.

Appendix II–E, § 3.2 of the Fire Code requires that the HMMP include the following information: (1) General business information; (2) a general site plan; (3) a building floor plan; (4) information on hazardous materials handling; (5) information on chemical compatibility and separation; (6) a monitoring program; (7) inspection and record keeping; (8) employee training; and (9) emergency response procedures.

On July 3, 2002, Air France first applied to the Houston Fire Department for renewal of its permit to handle or store hazardous materials at its IAH cargo facility. Air France, however, was unable to obtain such a permit due, in part, to its inability to provide the Houston Fire Department with the detailed information it sought as part of the HMIS requirement. Given the nature of its operations, the hazardous materials that are present at the Air France cargo facility changes on a day-to-day basis (or even on an hour-to-hour basis) at these materials are in transit and are only present for palletization and other procedures related to their carriage by air. All hazardous material shipments present in the Air France facility are under active shipping papers (air waybills) and are only present there incidental to prior or subsequent air transportation. As a result, hazardous materials typically spend only a very short period of time at the Air France cargo facility. In addition, Air France is unable to predict what hazardous materials it may have in its facility at any given time since this is a function of the hazardous materials that its customers choose to ship.

Nevertheless, Air France has attempted to comply with the Houston Fire Department's requirements. At the request of the Houston Fire Department, Air France revised its HMIS and HMMP on several occasions subsequent to its July 3, 2002 submission (the Fire Department's rejection of Air France's submitted HMMP and HMIS is evidenced by the Notice of Violation, dated October 23, 2002, attached hereto as Exhibit 2). As none of these submissions were satisfactory to the Fire Department, Air France ultimately found it necessary to retain Loss Control Associates, Inc., a fire protection engineering firm, to assist it in completing these forms. At the suggestion of the Houston Fire Department, Loss Control Associates conducted a survey of NOTOCs (Notifications to Captains) and manifests for shipments transiting the Air France IAH cargo facility during a prior sixth-month period in order to estimate the maximum aggregate quantities of hazardous materials stored at any one time as required to be provided in the HMIS. In addition, as the common names and trade names of hazardous materials are not contained on

[1] To the extent that a HMMP or a HMIS is required by the Fire Department to obtain a permit to handle or store flammable or combustible liquids under Article 79 of the Fire Code, Air France also requests that such requirements be preempted.

[2] Applicable provisions of the Fire Code are attached hereto as Exhibit 1.

[3] Fire Code § 105.8.1

[4] Fire Code § 8001.3.1

[5] Fire Code §§ 8001.3.2 and 8001.3.3.

[6] Fire Code App. II–E,§ 2.2

shipping papers, the engineering firm was required to contact the numerous shippers and manufacturers of the materials in order to obtain the information and complete the HMIS.

In addition to the permit to handle or store hazardous materials, the Houston Fire Department also required Air France to apply for and obtain a permit to handle or store flammable and combustible liquids, including requiring Air France to submit an additional HMMP and HMIS The HMMPS and HMISs prepared for Air France by Loss Control Associates and finally accepted by the Fire Department are attached hereto as Exhibit 3. Air France spent over $7,000.00 in its effort to comply with the HMMP and HMIS requirements imposed by the Houston Fire Department to obtain these local permits. The Fire Department issued the annual permit to handle or store hazardous materials on June 17, 2003 and issued the annual permit to handle or store flammable and combustible liquids on June 27, 2003 but refused to deliver the permits to Air France until after a hazardous materials storage cabinet was installed at the carrier's new cargo facility (discussed below). Air France finally received both of the permits from the Houston Fire Department on August 6, 2003 (copies of the permits issued by the Fire Department are attached hereto as Exhibit 4). Since the permits are for a one-year period and expire on June 17 or 27, 2004, Air France will have to re-apply and undergo this same burdensome and costly application procedure next year and every year thereafter.

On February 10, 2003, while Air France was attempting to comply with the Houston Fire Department's permit requirements, representatives of the Fire Department visited the Air France cargo facility and cited Eric Roberts, the local Air France cargo manager, for several alleged violations of the Fire Code, including failure to post the required local permit for flammable liquids storage, handling or use, and failure to provide a proper HMIS for storage of hazardous materials. Mr. Roberts was also cited by the Fire Department for allegedly failing to provide proper H-occupancy for storage of flammable liquids above exempt amounts, as well as for failing to post a valid certificate of occupancy (the citations are attached hereto as Exhibit 5). There is a Houston municipal court trial related to these citations scheduled for November 13, 2003.

On July 8, 2003, Air France moved into a new cargo warehouse facility at IAH. The Lynxs Group developed the new facility for the Houston Airport System (''HAS''), the Houston municipal department responsible for managing the airport. Air France subleases the new facility from the Lynxs Group. As a condition of issuing a certificate of occupancy for the new building, the Houston Fire Department required that a hazardous materials storage cabinet be installed and used at the facility for the storage by Air France of certain in transit hazardous materials. Consequently, the Lynxs Group agreed with the Fire Department to require Air France contractually to use a storage cabinet so that a certificate of occupancy could be obtained for the new facility. The Lynxs Group agreed to purchase the cabinet and finance its acquisition by assessing Air France additional rent for a 60-month period. The cost of the storage cabinet, including installation, was approximately $50,000. The specific storage cabinet requirements imposed on Air France by the Fire Department are described in the Letter Agreement between the Lynxs Group and Air France, dated April 15, 2003 (attached hereto as Exhibit 6). The certificate of occupancy was issued on June 27, 2003 with a notation that ''HAZARDOUS MATERIAL ABOVE THE EXEMPT AMOUNTS SHALL BE STORED IN LOCKERS PER FIRE MARSHALL'' (the certificate of occupancy is attached hereto as Exhibit 7).

While the Houston Fire Department has not identified for Air France the specific Fire Code provisions under which it has required the installation and use of the hazardous materials storage cabinet, various provisions of the Fire Code concern the use of such cabinets. For example, § 8001.10.6 of the Fire Code provides that storage cabinets may be used to increase exempt amounts or to comply with Article 80.[7] In addition, § 8001.11.8 provides that, among certain other methods, the separation of incompatible materials may be achieved by storing liquid and solid materials in hazardous materials storage cabinets.[8] Finally, while it does not specifically address the use of hazardous materials storage cabinets, § 8003.1.3.3 provides secondary containment requirements for buildings, rooms and areas used for the storage of hazardous materials liquids and solids.[9] The Fire Department has provided Air France with a copy of Fire Code Tables 7902.3–A,7902.5–A, 7902.5–B, 8001.15–A and 8001.15–B and indicated that these tables contain the exempt amounts of hazardous materials above which must be stored in the cabinet (the Fire Code tables of exempt amounts are attached hereto as Exhibit 8).

No other U.S. jurisdiction requires Air France to obtain a local permit to store hazardous materials at its cargo warehouses located in the U.S. Of the eleven U.S. cities Air France serves, it operates cargo warehouse facilities at six: Boston, Chicago, Houston, Los Angeles, Miami and Washington. In addition, no other U.S. jurisdiction requires Air France to install and use hazardous materials storage cabinets at any of its U.S. cargo facilities.

Air France therefore requests a determination that § 105.8.h.1, § 8001.3.1, § 8001.3.2, § 8001.3.3 and Appendix II–E of the Fire Code are preempted to the extent that these provisions require Air France to submit a HMMP or a HMIS in order to obtain a local permit to handle or store hazardous materials at its IAH cargo facility.[10] In addition, Air France requests that Exhibit 6 and § 8001.10.6, § 8001.11.8, § 8003.1.3.3, § 7902.5.9, § 7902.1.6, § 7901.8, or any other provision of the Houston Fire Code or other independent requirement of the Houston Fire Department, are preempted to the extent that these requirements or provisions mandate the installation or use of a hazardous materials storage cabinet at the new Air France cargo facility at IAH.

III. DOT's Preemption Authority Under Federal Hazardous Materials Transportation Law

The Hazardous Materials Transportation Act (''HMTA''), former 49 App. U.S.C. 1801 *et seq.,* was enacted in 1975 to give DOT greater authority ''to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.'' [11] The HMTA ''replace[d] a patchwork of state and federal laws and regulations concerning hazardous materials transport with a scheme of uniform, national regulations.'' [12] On July 5, 1994, President Clinton signed Public Law 103–272, codifying the provisions of the HMTA without substantive change, which are now found at 49 U.S.C. §§ 5101–5127.[13]

When Congress substantively amended the HMTA in 1990, it specifically found that:

(3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, *permitting,* routing, notification, and other regulatory requirements,

(4) Because of the potential risk to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and *foreign* commerce are necessary and desirable.[14]

In amending the HMTA, Congress affirmed that ''uniformity was the linchpin'' of the statute.[15] Accordingly, Congress gave DOT the authority to preempt a requirement of a

[7] In addition, § 7902.5.9 provides quantity limitations and construction requirements when other sections of the Fire Code require that liquid containers be stored in storage cabinets.

[8] § 7902.1.6 also provides that the storage of flammable and combustible liquids are required to be separated from incompatible hazardous materials in accordance with § 8001.11.8.

[9] § 7901.8 also provides that rooms, buildings or areas used for storage or handling of flammable and combustible liquids shall be provided with spill control and secondary containment in accordance with, *inter alia,* § 8003.1.3.

[10] Air France also requests that the Houston Fire Department's requirement that the carrier submit a HMMP and a HMIS in order to obtain a permit to handle or store flammable or combustible liquids (§ 105.8.f.3 and § 7901.3.1) also be preempted.

[11] 49 App. U.S.C. 1801.

[12] *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, 909 F.2d 352, 353 (9th Cir. 1990).

[13] Pub. L. 103–272, 108 Stat. 745 (1994).

[14] Pub. L. 101–615, § 2, 104 Stat. 3244 (1990) (emphasis added.)

[15] *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991).

State, political subdivision of a State, or an Indian tribe where:

(1) Complying with such a requirement and a requirement of this chapter [49 U.S.C. 5101 *et seq.*], a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible (the ''dual compliance test''); or

(2) Such a requirement, as applied or enforced, is an obstacle to accompanying and carrying out this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulations or directive issued by the Secretary of Homeland Security (the ''obstacle test'').[16]

Congress also gave DOT the authority to preempt a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe concerning five covered subjects, including: (A) the designation, description, and classification of hazardous material and (B) the packaging, repackaging, handling, labeling, marking, and placarding of hazardous material, that are not substantively the same as a provision of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security (the ''covered subjects test'').[17]

The Research and Special Programs Administration (''RSPA'') has enacted regulations under which ''any person . . . directly affected by any requirement of a State, political subdivision, or Indian tribe may apply for a determination as to whether that requirements is preempted under 49 U.S.C. 5125'' [18] The standards established by RSPA for determining whether a requirement of a State, political subdivision, or Indian tribe is preempted are essentially the same as the standards stated in 49 U.S.C. 5125(a)(1) and (2) and (b)(1).[19] For the purpose of making preemption determinations, RSPA has defined ''substantially the same'' to mean ''that the non-Federal requirement conforms in every significant respect to the Federal requirement.'' [20]

The HMR have been promulgated in accordance with the HMTA's direction that the Secretary of Transportation ''prescribe regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce'' [21] The HMR ''shall govern safety aspects of the transportation of hazardous material the Secretary considers appropriate.'' [22] ''Transportation'' is defined as ''the movement of property and loading, unloading, or *storage incidental to the movement.*'' [23]

[16] *See* 49 U.S.C. 5125(a)(1) and (2).

[17] *See* 49 U.S.C. 5125(b)(1)(A) and (B).

[18] 49 CFR 107.201(a)(1).

[19] *See* 49 CFR 107.202(a) and (b).

[20] 49 CFR 107.202(d).

[21] 49 U.S.C. 5103(b).

[22] 49 U.S.C. 5103(b)(1a)(B).

[23] 49 U.S.C. § 5102(12) (emphasis added). Air France is aware that the Department has issued a Notice of Proposed Rulemaking seeking to clarify the applicability of the HMR to specific functions and activities, including loading, unloading and storage of hazardous materials during transportation. Docket No. RSPA–98–4952 (HM–223), 66 FR 32420 (June 14, 2001). Under the proposed rule, ''storage incidental to movement'' would be defined as:

''Storage of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material for the purpose transporting it until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document, package marking, or other medium. * * *'' 66 Fed. Reg. at 32448.

IV. The Requirements Contained in the Houston Fire Code To Submit a Hazardous Materials Management Plan and a Hazardous Materials Inventory Statement in Order To Obtain a Permit To Handle or Store Hazardous Materials Should Be Preempted in Accordance With DOT Precedent as an Obstacle to the Execution of the HMTA and the HMR

In Inconsistency Ruling No. IR–28 (San Jose), 55 FR 8884 (March 8, 1990), RSPA held that a local ordinance requiring the submission of a HMMP and a HMIS in order to obtain a permit to store hazardous materials incidental to transportation is an obstacle to the execution of the HMTA and the HMR and thus preempted. Since the Houston Fire Department is imposing virtually identical HMMP and HMIS requirements upon Air France in order for the carrier to obtain a permit to handle or store in transit hazardous materials at its cargo facility at IAH, these requirements should similarly be preempted in accordance with IR–28 (San Jose).

The Hazardous Materials Storage Ordinance at issue in IR–28, which was contained in the San Jose Municipal Code, required Yellow Freight System, Inc., (''Yellow Freight'') to obtain a Hazardous Materials Storage Permit (''HMSP'') and submit a HMMP to operate its expanded trucking terminal.[24] Among several other items, San Jose required that a HMIS, including names, hazard classes and total quantities, be included in the HMMP.[25] Yellow Freight argued that the fluid nature of the commerce through its facility made it impossible to comply with San Jose's inventory requirements.[26]

While RSPA's Director of the Office of Hazardous Materials Transportation noted that ''State and local permits for hazardous materials transportation are not *per se* inconsistent [and] their consistency depends upon the nature of their requirements[,]'' [27] the Director went on to state that:

a state or local permitting system which prohibits or requires certain hazardous materials transportation activities depending upon whether a permit has been issued (regardless of whether the activity is in compliance with the HMR), applies to selected hazardous materials * * * involves extensive information and documentation requirements [such as a HMMP and a HMIS], and contains considerable discretion as to permit issuance, is inconsistent with the HMTA and the HMR.

[24] *See id* at 8885.

[25] *See id*.

[26] *See id* at 8888.

[27] *Id* at 8890 (citation omitted).

'Cumulatively, these factors constitute unauthorized prior restraints on shipments of hazardous materials that are presumptively safe based on their compliance with Federal regulations.' [28]

The Director concluded that ''the City's discretionary and burdensome permit/approval requirements for the storage of hazardous materials incidental to their transportation (*e.g.,* at motor carrier terminals) are inconsistent and thus preempted.'' [29]

With respect to San Jose's HMMP and HMIS requirement, the Director noted that ''[i]nformation and documentation requirements as prerequisites to hazardous materials transportation have been considered on many prior occasions. Where such requirements exceed Federal requirements, they have been found to create potential delay or diversion of hazardous materials transportation, to constitute an obstacle to the execution of the HMTA and the HMR, and thus to be inconsistent.'' [30] The Director stated that ''the HMTA and HMR provide sufficient information and documentation requirements for the safe transportation of hazardous materials; state and local requirements in excess of them constitute obstacles to implementation of the HMTA and HMR and thus are inconsistent with them.'' [31] The Director went on to find that:

the City of San Jose has imposed extensive (practically exhaustive), extremely detailed, burdensome, open-ended, vague and impossible-to-comply-with information and documentation requirements as a condition precedent to, inter alia, the storage of hazardous materials incidental to the transportation thereof without regard to whether that transportation-related storage is in compliance with the HMR. *For example, the detailed information required to be provided concerning the identity and quantity of hazardous materials (and other materials) which a transportation carrier might store at its facility during a given year is impossible to compile and provide in advance because a common carrier is at the mercy of its customers, including the general public, who may without advance notice offer to the carrier for transportation virtually any quantity of any of the thousands of hazardous materials listed in, or covered by, the HMR.*[32]

The Director also found that San Jose's information and documentation requirements, insofar as they relate to hazardous materials to be stored at a facility incidental to transportation, constitute an inconsistent advance notice requirement since they have the potential to delay and redirect traffic.[33]

[28] *Id* (quoting Inconsistency Ruling No. IR–19 (the Inconsistency Ruling underlying the Ninth Circuit's decision in *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada*, 909 F. 2d 352 (9th Cir. 1990) discussed below).

[29] *Id* at 8890–91.

[30] *Id* at 8891.

[31] *Id* (citing IR–19).

[32] *Id* (emphasis added).

[33] *See id* (citing IR–8 (Appeal) and IR–16).

As the Director correctly explained:

It is impossible for a common carrier to comply with the City's requirements concerning advance identification of hazardous materials and quantities thereof. As a result, when the carrier/facility operator receives or is offered hazardous materials not previously identified or in quantities exceeding those projected, it faces a dilemma: Whether to comply with its obligations under the HMR to transport the materials without delay, to hold the materials pending an amended application to the City, to divert the materials to another jurisdiction for any necessary transportation-related storage, or to violate its common carrier obligation by refusing to accept any such materials.[34]

The Director also found that ''the City's information requirements are inconsistent with the HMR insofar as they require emergency response information as a prerequisite to the loading, unloading, and storage of hazardous materials incidental to their transportation.'' [35] In reaching this conclusion, the Director stated that:

With the promulgation of these regulations [49 CFR Part 172, subpart G], RSPA's emergency response information requirements for hazardous materials transportation, including the loading, unloading, or storage incidental to such transportation exclusively occupy that field. Therefore, state and local requirements not identical to these HMR provisions will cause confusion concerning the nature of such requirements, undermine compliance with the HMR requirements, constitute obstacles to implementation of those provisions, and thus be inconsistent and preempted.[36]

The rationale used by the Department to preempt the HMMP and HMIS permit requirements in IR–28 (San Jose) applies with equal force with respect to the present Houston requirements. In IR–28 (San Jose), the Department found that where extensive information and documentation is required in order to obtain a permit (such as with a HMMP and a HMIS), such requirements might constitute an unauthorized prior restraint on the shipment of hazardous materials. With respect to the HMIS, the Department held that detailed information concerning the identity and quantity of hazardous materials that a carrier might store at its facility incidental to transportation is impossible to compile and provide in advance since such information depends on what the carrier's customers choose to ship. The Department also found that extensive information and documentation requirements, insofar as they relate to hazardous materials to be stored at a facility incidental to transportation, might constitute an inconsistent advanced notice requirement since they have the potential to delay and redirect traffic. Finally, DOT found that the HMR exclusively occupy the field of emergency response information requirements for the transportation of hazardous materials. In this Application, Air France respectfully request that RSPA follow its decision in IR–28 (San Jose) by holding that the virtually identical HMMP and HMIS permit requirements contained in the Houston Fire Code are similarly incidental to their movement by air at the Air France cargo facility at IAH.

A similar Department Inconsistency Ruling was upheld by the Ninth Circuit Court of Appeals in *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n of Nevada,* 909 F.2d 352 (9th Cir. 1990). There the Ninth Circuit reversed an order of the district court granting summary judgment to the Public Service Commission of Nevada (''PSC'') and reinstated the DOT Inconsistency Ruling. In that case, Southern Pacific Transportation Company (''SPTC'') argued that PSC regulations requiring rail carriers to obtain an annual permit prior to loading, unloading, transferring or storing hazardous material on railroad property within the state of Nevada were preempted by the HMTA and the Federal Railroad Safety Act.[37] In order to obtain the permit, applicants were required to submit, among several other items, ''[a] summary of all hazardous material carried by the railroad during the proceeding 12 months[.]'' [38]

In reversing the district court's decision for failing to accord sufficient deference to the underlying Inconsistency Ruling issued by DOT (IR–19 (Appeal), 53 FR 11600 (April 7, 1988)), the Ninth Circuit stated that:

The DOT found that its regulations and the Nevada regulations address many of the same matters. For instance, it found that several of its own regulations already addressed storage incident to the transportation of hazardous materials, the primary focus of the Nevada regulations * * * Because the Nevada regulations address matters already covered by the federal regulations, impose substantial burdens on applicants, and create the risk of confusion, conflicts, and delays, the DOT determined that they were inconsistent with the federal regulations.[39]

The court went on to cite numerous HMR provisions that address loading, unloading, and storage (including temporary storage) of hazardous materials during carriage by rail, concluding that ''[a]t least one Federal court has recently held that 'the extent of Federal regulation in the area of transportation, loading, unloading and storage of hazardous materials is comprehensive.' '' [40] The court found that ''[d]espite DOT's extensive regulation of loading, unloading, transfer and storage incidental to the transportation of hazardous materials, the Nevada regulations require a carrier to obtain an annual permit prior to engaging in these activities within the State of Nevada. The Nevada regulations, thus, create a separate regulatory regime for these activities, fostering confusion and frustrating Congress' goal of developing a uniform, national scheme of regulation.'' [41] In addition, the court noted that ''Federal regulations also impose specific information and documentation requirements deemed necessary for the safe transportation of hazardous materials. * * *'' and that the Nevada regulations ''indicate the State's attempt to regulate areas clearly addressed in the Federal regulations.'' [42]

The same can be said of the HMMP and the HMIS requirements contained in the Houston Fire Code. For example, despite the fact that 49 CFR 172.600(c)(2) requires emergency response information to be immediately available to any Federal, State or local government agency representative that responds to an incident involving a hazardous material (including providing the basic description and technical name of the hazardous material as required by §§ 172.202 and 172.203(k), the ICAO Technical Instruction, the IMDG Code or the TDR Regulations as required by § 172.602(a)(1)), Air France is also required by the Fire Code to submit a HMIS on which it must list all hazardous materials that it might store in its cargo facility, including the common names or trade names of the hazardous materials and the maximum aggregate quantity stored at any one time.[43] In addition to being impossible to accurately compile and provide in advance because the amount and type of hazardous materials that are present at the Air France cargo facility is a function of what its customers choose to ship, such a requirement also indicates an attempt by the Houston Fire Department to regulate an area (emergency response information) that is already addressed in the HMR.

Moreover, the confusion that the court in *Southern Pac.* suggested would be fostered by two separate regulatory regimes is illustrated by the inability of Air France to comply with the HMIS requirement to provide common names or trade names for the hazardous material shipped through its cargo facility at IAH. Neither the common names nor trade names of hazardous materials are required by the HMR to be included on a carrier's shipping papers. Air France should not be required to retain a fire protection engineering firm to conduct a survey of prior shipping papers and investigate the common names and trade names of the hazardous materials with the shippers and manufacturers of the materials in order to provide this information to the Fire Department. At best, conducting such a time-consuming and expensive survey only results in a sampling of the common names and trade names of the various hazardous materials shipped through the Air France warehouse and might not even accurately reflect which materials are actually present in the facility at any given time. For these reasons, the local Houston permit, HMIS and HMMP requirements should be preempted by the Department as obstacles to the execution of the HMTA and the HMR.

Interestingly, the Houston Fire Code permit requirements have been the subject of a prior DOT preemption proceeding. In Preemption Determination No. PD–14(R), 64 FR 33949 (June 24, 1999), RSPA affirmed its earlier Preemption Determination (No. PD–14(R), 63

[34] *Id* at 8892.

[35] *Id.*

[36] *Id.*

[37] *See id* at 353.

[38] *Id* at 354 (citing Nev. Admin. Code § 705.330(e)).

[39] *Id* at 355–56.

[40] *Id* at 357 (quoting *Consolidated Rail Corp.* v. *Bayonne,* 724 F. Supp. 320, 330 (D.N.J. 1989)).

[41] *Id* at 358.

[42] *Id.*

[43] Fire Code App. II–E, § 2.1

FR 67506 (December 7, 1998)) finding that certain provisions of the Houston Fire Code (the 1994 edition of the Uniform Fire Code), including the permit requirements in § 105.8.h.1, § 8001.3.1, § 105.8.f.3 and § 7901.3.1 were not preempted (to the extent that these sections require a permit for a vehicle to transport hazardous materials in commerce within the City) because the local Fire Code provisions by explicit exception did not apply to the transportation of hazardous materials subject to the HMR.[44] In PD–14(R), the Association of Waste Hazardous Materials Transporters (''AWHMT'') had challenged certain provisions of the Fire Code, including provisions requiring inspections and fees in order to obtain an annual permit for cargo tank motor vehicles to pickup or deliver hazardous materials within the City.[45] In that case, RSPA reasoned that the specific exceptions in §§ 7901.1.1 and 8001.1.1 for transportation ''in accordance with'' DOT regulations makes it clear that the Fire Code is not intended to apply to vehicles when they are transporting hazardous materials subject to the HMR.[46] RSPA therefore concluded that there was no inconsistency with Federal hazardous material transportation law or the HMR when the Fire Code is properly applied in this manner.[47]

In reaching this conclusion, RSPA noted that:

the City specifically acknowledged that the 'express exceptions for DOT-regulated activities' in Secs. 7901.1.1 and 8001.1.1 mean that 'the Fire Code should not be read as applicable to over-the-road (off-site) transportation * * *'. The City elaborated that *'permits will not be required for DOT-regulated activities'[.]*[48]

In its initial Preemption Determination, RSPA noted that the City had stopped requiring permits of vehicles meeting DOT requirements.[49] RSPA concluded that [b]ecause the City now correctly equates the exceptions in the Houston Fire Code for vehicles 'meeting DOT requirements' with 'subject to regulation by DOT' under the HMR, AWHMT's challenges to these requirements have become moot.''[50]

While AWHMT did not challenge the City's requirements that apply to a facility that stores hazardous materials, as opposed to vehicles that move those materials, RSPA nevertheless undertook a discussion of the issue stating that:

RSPA has long encouraged States and localities to adopt and enforce requirements on the transportation of hazardous materials that are consistent with the HMR. *See, e.g.,* PD–12(R), 60 FR at 62530. This applies to storage that is incidental to the movement of hazardous materials in commerce, as well as the actual movement of those materials. *The enforceability of non-Federal requirements on 'incidental' storage depends on the consistency of those requirements with the HMR and, of course, the applicability of the requirements themselves in terms of exceptions such as Secs. 7901.1.1 and 8001.1.1 of the Uniform Fire Code.*[51]

Citing IR–28 (San Jose), RSPA reiterated its position that:

detailed information required to be provided concerning the identity and quantity of hazardous materials (and other materials) which a transportation carrier might store at its facility during a given year is impossible to compile and provide in advance because a common carrier is at the mercy of its customers, including the general public, who may without advance notice offer to the carrier virtually any quantity of any of the thousands of hazardous materials listed in, or covered by, the HMR.[52]

RSPA concluded that ''[t]o to the extent that the exceptions in Secs. 7901.1.1 and 8001.1.1 mean that provisions of the Uniform Fire Code do not apply to transportation of hazardous materials in commerce, including incidental storage, that result derives from the plain language of the Uniform Fire Code and not from any inconsistency with the HMR.[53]

Although RSPA held in Preemption Determination No. 14(R) that the permit requirements contained in § 105.8.h.1, § 8001.3.1, § 105.8.f.3 and § 7901.3.1 of the Fire Code were not preempted by Federal hazardous materials law (to the extent that these sections require a permit for a vehicle to transport hazardous materials in commerce within the City), RSPA's holding rested on the exceptions contained in the Fire Code that permits are not required for transportation of hazardous materials in accordance with DOT requirements and the fact that the city had stopped requiring permits for the activities in question.

In addition, in PD–14(R), RSPA specifically noted that the enforceability of non-Federal requirements on incidental storage depends on the consistency of those requirements with the HMR and the applicability of the requirements themselves in terms of exceptions contained in the Houston Fire Code. The Fire Department, however, assuredly is not enforcing its permit requirements in accordance with the express terms of the Houston Fire Code (*i.e.*, the exceptions contained in § 105.8.h.1, § 105.8.f.3 and § 7901.3.1 for activity where the requirement for a local permit has been preempted by Federal or state law) since it is enforcing the permit requirements against carriers such as Air France under circumstances that have already been determined to be preempted, including requiring the submission of a HMMP and a HMIS (*see e.g.*, IR–28 (San Jose) and Southern Pac. Transp. Co., 909 F.2d 352 (9th Cir. 1990)).

V. The Fire Department's Hazardous Materials Storage Cabinet Requirement Should Also Be Preempted as an Obstacle to the Execution of the HMTA and the HMR

The hazardous materials storage cabinet requirement imposed by the Houston Fire Department on Air France pursuant to Exhibit 6 should also be preempted by the HMTA and the HMR.[54] This requirement is an obstacle to compliance with specific HMR provisions and conflict with the Department's ruling in IR–28 (San Jose).

In IR–28 (San Jose), RSPA noted that ''state or local prohibition of transportation-related storage at places where, and at times when, the HMR allow such storage is inconsistent with the HMTA and the HMR.''[55] In that case, Yellow Freight had complained that the City of San Jose desired to have every shipment of hazardous material that is not moving directly across the dock into an immediately available vehicle moved instead into one of a series of specially constructed and segregated storage bunkers, with materials divided by hazard classification.[56] Yellow Freight maintained that the movement of these materials in and out of such bunkers would cause confusion, delay and safety problems for its employees.[57]

In addressing the secondary containment and segregation requirements for hazardous materials imposed by San Jose, the Director noted that § 177.848(f) (now § 177.848(d)) provided that ''[h]azardous materials must not be loaded, transported, or stored together, except as provided in' a detailed Segregation and Separation Chart of Hazardous Materials, which is a part of that Section.''[58] Accordingly, the Director found that:

State or local imposition of containment or segregation requirements for the storage of hazardous materials incidental to the transportation thereof different from, or additional to those in, § 177.848(f) of the HMR [which applies to carriage by public highway] create confusion concerning such requirements and [increase] the likelihood of noncompliance with § 177.848(f). Since such state or local requirements, therefore, are obstacles to the execution of an HMR provision, they are inconsistent with the HMR—insofar as they apply to transportation-related storage.[59]

The Houston Fire Department's requirement that Air France use a hazardous materials storage cabinet for the temporary storage of certain in transit hazardous materials also has the potential to create confusion and increase the likelihood of noncompliance with the hazardous materials segregation and separation rules established for air carrier cargo facilities contained in

[44] 64 FR at 33953.
[45] *See id* at 33949.
[46] *See id* at 33951.
[47] *See id.*
[48] *Id* (emphasis added).
[49] *See* (No. PD–14(R), 63 FR at 67510.
[50] 64 FR at 33951.
[51] *Id* at 33952 (emphasis added).
[52] *Id.*
[53] *Id.*
[54] Air France also requests that Fire Code § 8001.10.6, § 8001.11.8, § 8003.1.3.3, § 7901.8, § 7902.5.9 and § 7902.1.6 be preempted to the extent that the Fire Department relies on these provisions to require Air France to use a hazardous materials storage cabinet.
[55] 55 FR at 8893 (citing IR–19).
[56] *See id* at 8888.
[57] *See id.*
[58] *Id* at 8893.
[59] *Id.*

§ 175.78 of the HMR.[60] Air France should not be required to choose between following the Fire Department's storage requirements or complying with the segregation and separation requirements contained in the HMR.

Let us be clear that the local Houston requirement is clearly restricting storage that is incidental to transportation subject to the HMR. All hazardous material shipments at the Air France IAH facility are under active shipping papers (through air waybills); they are in transit prior to continuing transportation by truck or by aircraft to the ultimate consignee.

The local Houston requirement to store certain in transit hazardous materials in a storage cabinet also has the potential to create delays and diversions in the transportation of such materials. Obviously, the storage cabinet required by the Fire Department is only able to hold a limited amount of hazardous materials, *i.e.*, 48 55-gallon drums. When the cabinet is full (or other incompatible hazardous materials are already stored in the cabinet) hazardous materials may have to be shipped through other jurisdictions using a more circuitous routing in order to reach their final destination. Thus, the Fire Department's storage cabinet requirement could have a direct impact on the length of time certain shipments of hazardous materials remain in transit thereby increasing the risk associated with their transportation. In fact, within the first few days of using the storage cabinet, Air France had to delay for two days the acceptance of a shipment of flammable liquid due to the lack of space in the cabinet. As RSPA noted in IR–28 (San Jose) ''[t]he manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation.'' [61]

In addition, if the Fire Department's storage cabinet requirement is allowed to remain in place, Air France will be required to load and unload certain hazardous materials into and out of the cabinet increasing the number of times that the hazardous materials are handled. As one court has recognized, ''the more frequently hazardous material is handled during transportation, the greater the risk of mishap. Accordingly, these provisions [the HMTA] require that the material reach its destination as quickly as possible, with the least amount of handling and temporary storage.'' [62] Since the hazardous materials storage cabinet being required by the Houston Fire Department has the potential to create delays and diversions in the transportation of hazardous materials and will increase the amount that the materials are required to be handled, this requirement should be preempted as an obstacle to the execution of the HMTA and the HMR.

Given the obvious potential for delays and diversions in the transportation of hazardous materials associated with the Houston Fire Department's storage cabinet requirement, the current situation can easily be distinguished from PD–12(R), 62 Fed. Reg. 15970 (April 3, 1997), in which RSPA reversed its earlier decision in the same proceeding concluding that certain secondary containment requirements of the New York State Department of Environmental Conservation were not preempted due to a lack of information from which to determine that the requirements actually cause delays or diversions in the transportation of hazardous materials.

Nor is there a rational and compelling local governmental interest for requiring Air France to use storage cabinets to store certain in transit hazardous materials in its warehouse while not imposing the same requirement on comparably constructed retail establishments like a Home Depot or a Wal-Mart. According to Table 7902.5–A, Air France is required to store a shipment of paint thinner (a class I–B flammable liquid) over 120 gallons in a storage cabinet (the Air France facility is equipped with an approved automatic sprinkler system), while Table 7902.5–B provides a 15,000-gallon to 30,000-gallon exemption (depending on the size of the store) for paint thinner stored in retail establishments. The Houston Building Code also appears to provide an exception to the city's H-occupancy requirements for wholesale and retail establishments that store flammable and combustible liquids.[63] The irrational nature of the Fire Department's differing treatment of these two types of facilities becomes even more apparent when one considers that hazardous materials temporarily stored in the Air France warehouse will have the added security of being enclosed in DOT-approved packaging rendering them suitable for carriage by air; hazardous materials stored in retail establishments, on the other hand, are most likely packaged and stored in ordinary boxes or other types of containers. Absent a rational and compelling regulatory scheme, any claim of local governmental interest must be rejected and the local requirement preempted as an obstacle to the execution of the HMTA and the HMR.

VI. Conclusion

Pursuant to 49 CFR 107.205(b), Air France respectfully requests that a notice of this Application be published in the **Federal Register** with an opportunity for public comment. Air France further requests that upon consideration of the comments received and the prior Inconsistency Rulings, Preemption Determinations and court decisions discussed in this Application, that RSPA issue a determination finding that: (1) the Hazardous Materials Management Plan and Hazardous Materials Inventory Statement provisions contained in the Houston Fire Code are preempted to the extent that these items are required to be submitted in order for Air France to obtain a permit to handle or store in transit hazardous materials at its cargo facility at George Bush Intercontinental Airport; and (2) the Houston Fire Department's requirement that Air France use a hazardous materials storage cabinet for the storage of certain in transit hazardous materials is preempted.

VII. Certification

Pursuant to 49 CFR 107.205(a), I hereby certify that a copy of this Application has been sent via first class mail postage pre-paid with an invitation to submit comments to:

Randy Rivin, Esquire, Legal Department, City of Houston, P.O. Box 1562, Houston, TX 77251–1562.

Mr. Richard M. Vacar, Director of Aviation, Bush Intercontinental Airport, P.O. Box 60106, Department of Aviation, Houston, TX 77205–0106.

Dated: October 15, 2003.

Respectfully submitted,

Michael F. Goldman,

L. Jeffrey Johnson,

Silverberg, Goldman & Bikoff, L.L.P., 1101 30th Street, NW., Suite 120, Washington, DC 20007. Counsel for Societé Air France.

List of Exhibits

Exhibit 1—Applicable Houston Fire Code Provisions

Exhibit 2—Fire Department Notice of Violation, dated October 23, 2002

Exhibit 3—HMMPs and HMISs prepared for Air France by Loss Control Associates, Inc.

Exhibit 4—City of Houston permits issued to Air France to handle or store hazardous materials and flammable or combustible liquids

Exhibit 5—Fire Department Violation Citations, dated February 10, 2003

Exhibit 6—Letter Agreement between Lynxs Group and Air France, dated April 15, 2003

Exhibit 7—Certificate of occupancy, issued June 27, 2003

Exhibit 8—Fire Code tables of exempt amounts

Exhibit 9—Applicable Houston Building Code Provisions

[FR Doc. 03–28254 Filed 11–12–03; 8:45 am]

BILLING CODE 4910–60–M

[60] § 175.78 provides a similar hazardous materials segregation and separation chart for air carriers (including air carrier cargo facilities) as that found in § 177.848(d).

[61] 55 FR at 8892.

[62] *Consolidated Rail Corp.* v. *Bayonne*, 724 F. Supp. 320, 330 (D.N.J. 1989).

[63] *See* § 307.9, paragraph 4 of the Building Code of the City of Houston, the 2000 edition of the International Building Code as adopted with certain amendments, attached hereto as Exhibit 9.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Office of

Thrift Supervision (OTS), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the OTS, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies'publication for public comment of a proposal to extend, without revision, the Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks (FFIEC 004), which are currently approved information collections. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the report. The agencies will then submit the report to OMB for review and approval.

DATES: Comments must be submitted on or before January 12, 2004.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number, will be shared among the agencies.

OCC: Comments should be sent to the Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0070, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e–mail. Comments may be sent by fax to (202) 874–4448, or by e–mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: 1550–0075, Fax number (202) 906–6518, or e–mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at www.ots.treas.gov. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e–mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

Board: Written comments, which should refer to ''FFIEC 004, 7100–0034'' may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by electronic mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in room M–P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. All comment should refer to ''FFIEC 004, 3064–0023.'' Commenters are encouraged to submit comments by fax or electronic mail [FAX number (202) 898–3838; Internet address: *comments@fdic.gov*]. Comments also may be hand–delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

OTS: Marilyn Burton, OTS Clearance Officer, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

Board: Cindy Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Proposal to extend for three years without revision the following currently approved information collection:

Title: Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks

Form Number: FFIEC 004

Frequency of Response: Annually (for executive officers and principal shareholders), and on occasion (for national banks, state member banks, insured state nonmember banks, and savings associations)

Affected Public: Individuals or households, businesses or other for–profit

For OCC:

OMB Number: 1557–0070

Estimated Number of Respondents: 25,300 (23,000 executive officers and principal shareholders fulfilling record keeping burden, 2,300 national banks fulfilling record keeping and disclosure burden)

Estimated Time per Response: 2.25 hours

Estimated Total Annual Burden: 56,925

For OTS:

OMB Number: 1550–0075

Estimated Number of Respondents: 4,336

Estimated Time per Response: 2.75 hours

Estimated Total Annual Burden: 11,924

For Board:

OMB Number: 7100–0034
Estimated Number of Respondents: 4,955 (3,964 executive officers and principal shareholders fulfilling record keeping burden, 991 state member banks fulfilling record keeping and disclosure burden)
Estimated Time per Response: 1.12 hours
Estimated Total Annual Burden: 5,551
For FDIC:
OMB Number: 3064–0023
Estimated Number of Respondents: 27,495 (21,996 executive officers and principal shareholders fulfilling record keeping burden, 5,499 insured state nonmember banks fulfilling record keeping and disclosure burden)
Estimated Time per Response: 1.8 hours
Estimated Total Annual Burden: 49,491
General Description of Report: These information collections are mandatory: 12 U.S.C. 1972(2)(G) (all); 12 U.S.C. 1817(k), 12 CFR 31.2, and 12 U.S.C. 93a (OCC); 12 U.S.C. 1468 and 12 CFR 563.43 (OTS); 12 U.S.C. 375(a)(6) and (10), and 375(b)(10) (Board); and 12 CFR 349.3 and 349.4 (FDIC). In general, these information collections are given confidential treatment (5 U.S.C. 552 (b)(8)), but banks and saving associations are required to make certain limited disclosures.

Abstract: Executive officers and principal shareholders of insured banks and saving associations must file with their institution the information contained in the FFIEC 004 report on their indebtedness and that of their related interests to correspondent banks. The information contained in the FFIEC 004 report is prescribed by statute and regulation, as cited above. Banks and saving associations must retain these reports or reports containing similar information and fulfill other record keeping requirements, such as furnishing annually a list of their correspondent banks to their executive officers and principal shareholders. Banks and saving associations also have certain disclosure requirements for these information collections.

Current Actions: The agencies propose to extend, without revision, the FFIEC 004 report. The agencies continue to evaluate the record keeping requirements contained in their regulations that relate to the FFIEC 004 report. Should the agencies decide to revise these regulations, a separate Federal Register notice will be published inviting comment from the public on the proposed revisions. Any revisions that may be made to the agencies' regulations would be subsequently incorporated into these information collections (FFIEC 004).

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

October 23, 2003.

Mark J. Tenhundfeld

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency

November 4, 2003.

James E. Gilleran,

Director, Office of Thrift Supervision

Board of Governors of the Federal Reserve System, November 6, 2003.

Jennifer J. Johnson

Secretary of the Board

Dated at Washington, D.C., this 22nd day of October, 2003.
Federal Deposit Insurance Corporation

Robert E. Feldman

Executive Secretary

[FR Doc. 03–28452 Filed 11–12–03; 8:45 am]

BILLING CODE 4810–33– 6720–01–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) will be discussing issues on IRS Customer Service.

DATES: The meeting will be held Monday, December 1, 2003.

FOR FURTHER INFORMATION CONTACT: Judi Nicholas at 1–888–912–1227, or 206–220–6096.

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 6 Taxpayer Advocacy Panel will be held Monday, December 1, 2003 from 8 a.m. Pacific Time to 8 a.m. Pacific Time 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 206–220–6096, or write to Judi Nicholas, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: November 5, 2003.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–28447 Filed 11–12–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0154]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment.

The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 15, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0154.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0154'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Certification of Lessons Completed, (Chapters 30, 32, and 35, Title 38, U.S.C.; Chapter 1606, Title 10, U.S.C., and Section 903, Public Law 96–343), VA Form 22–1990.

Type of Review: Revision of a currently approved collection.

Abstract: VA Forms 22–1990 is submitted by Veterans, Servicepersons and members of the Selected Reserve to apply for education assistance allowance under chapter 30 and 32, title 38 U.S.C.; chapter 1605, title 10, U.S.C.; and section 903 of Public Law 96–342. VA uses this information to determine the applicant's eligibility for benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 2, 2003, at pages 52272–52273.

Affected Public: Individuals or households.

Estimated Annual Burden: 72,000 hours.

Estimated Average Burden Per Respondent: 54 minutes.

Frequency of Response: Only once.

Estimated Number of Respondents: 80,000.

Dated: November 3, 2003. By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–28363 Filed 11–12–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0001]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 15, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0001.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0001'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veteran's Application for Compensation and/or Pension, VA Form 21–526.

OMB Control Number: 2900–0001.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–526 is used to determine a veteran's eligibility, dependency, and income, as applicable, for compensation and/or pension benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 20, 2003, at pages 50220–50221.

Affected Public: Individuals or households.

Estimated Annual Burden: 592,500.

Estimated Average Burden Per Respondent: 90 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 395,000.

Dated: November 3, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–28364 Filed 11–12–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0569]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–20), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 12, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0569.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0569'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: VA Voluntary Customer Surveys to Implement E.O. 12862.

OMB Control Number: 2900–0569.

Type of Review: Extension of a currently approved collection.

Abstract: VBA administers integrated programs of benefits and services,

established by law for veterans and their survivors, and service personnel. Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. VBA uses customer satisfaction surveys to gauge customer perceptions of VA services as well as customer expectations and desires. The results of these information collections lead to improvements in the quality of VBA service delivery by helping to shape the direction and focus of specific programs and services.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 2, 2003, at pages 52270–52272.

NATIONAL SURVEY ACTIVITIES

Year	Number of respondents	Estimated annual burden (hours)	Frequency of response
Survey of Veterans' Satisfaction with the VA Compensation and Pension Claims Process			
2004	24,000	7,920	One-time.
2005	24,000	7,920	One-time.
2006	24,000	7,920	One-time.
Survey of Veterans'/Dependents' and Servicemembers' Satisfaction with the VA Education Claims Process			
2004	2,968	979	One-time.
2005	2,968	979	One-time.
2006	2,968	979	One-time.
Survey of Educational Institution Certifying Officials			
2005	1,000	330	One-time.
2006	1,000	330	One-time.
Survey of Veterans' Satisfaction with the VA Home Loan Guaranty Process			
2004	7,560	1,262	One-time.
2005	7,560	1,262	One-time.
2006	7,560	1,262	One-time.
VA Loan Guaranty Lender Satisfaction Survey			
2004	1,992	498	One-time.
2005	1,992	498	One-time.
2006	1,992	498	One-time.
VA Survey of Veterans' Satisfaction with the Vocational Rehabilitation & Employment Program			
2004	3,300	1,089	One-time.
2005	3,300	1,089	One-time.
2006	3,300	1,089	One-time.
Insurance Customer Surveys			
2004	2,800	280	One-time.
2005	2,800	280	One-time.
2006	2,800	280	One-time.
Undetermined Focus Groups (Targeted population groups are to be decided)			
2004	500	1,000	One-time.
2005	500	1,000	One-time.
2006	500	1,000	One-time.
Telephone Survey			
2004	7,200	1,224	One-time.
2005	7,200	1,224	One-time.
2006	7,200	1,224	One-time.
VA Regional Office-Based Survey Activities Customer Satisfaction Focus Groups			
2004	600	1,800	One-time.
2005	600	1,800	One-time.
2006	600	1,800	One-time.

NATIONAL SURVEY ACTIVITIES—Continued

Year	Number of respondents	Estimated annual burden (hours)	Frequency of response
VA Regional Office-Specific Service Improvement Initiatives (Comment Card)			
2004	80,000	6,640	One-time.
2005	80,000	6,640	One-time.
2006	80,000	6,640	One-time.

Most customer satisfaction surveys will be recurring so that VBA can create ongoing measures of performance and to determine how well the agency meets customer service standards. Each collection of information will consist of the minimum amount of information necessary to determine customer needs and to evaluate VBA's performance. VBA expects to conduct an estimated 100 focus groups and receive up to 80,000 comment cards involving a total of 6,640 hours each year for 2004, 2005, and 2006. In addition, VBA expects to distribute written surveys with a total annual burden of approximately 16,052 hours in 2004, 16,382 hours in 2005, and 16,382 hours in 2005. The grand totals for the focus groups, comment cards, and written surveys are 22,692 hours in 2004, 23,022 hours in 2005, and 23,022 hours in 2006.

Anyone may view the results of previously administered surveys on the internet by going to the following VBA surveys Web site: *http://www.vba.va.gov/surveys/*.

The areas of concern to VBA and its customers may change over time, and it is important to have the ability to evaluate customer concerns quickly. OMB will be requested to grant generic clearance approval for a 3-year period to conduct customer satisfaction surveys, focus groups and to send out comment cards. Participation in the surveys, focus groups, and comment cards will be voluntary and the generic clearance will not be used to collect information required to obtain or maintain eligibility for a VA program or benefit. In order to maximize the voluntary response rates, the information collection will be designed to make participation convenient, simple, and free of unnecessary barriers. Baseline data obtained through these information collections will be used to improve customer service standards. VBA will consult with OMB regarding each specific information collection during this approval period.

Dated: November 3, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–28365 Filed 11–12–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0465]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 15, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0465.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0465'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Student Verification of Enrollment, VA Form 22–8979.

Type of Review: Extension of a currently approved collection.

Abstract: The form contains a student's certification of actual attendance and verification of that student's continued enrollment in courses leading to a standard college degree or in non-college degree programs. VA uses the information to determine the student's continued entitlement to benefits. The student is required to submit the verification on a monthly basis to allow for a frequent, periodic release of payment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 20, 2003, at page 50221.

Affected Public: Individuals or households.

Estimated Annual Burden: 45,575 hours.

Estimated Average Burden Per Respondent: 1–1/3 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 333,333.

Estimated Number of Responses: 2,000,000.

Dated: November 4, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–28366 Filed 11–12–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0577]

Proposed Information Collection Activity: Proposed Collection; Comment Request.

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a Spina Bifida child of Vietnam veterans' eligibility for ancillary benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 12, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0518'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Spina Bifida Award Attachment Important Information, VA Form 21–0307.

OMB Control Number: 2900–0577.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0307 is used to provide children of Vietnam veterans with Spina Bifida information about VA health care and vocational training and the steps they must take to apply for such benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

Dated: November 3, 2003.

By direction of the Acting Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–28367 Filed 11–12–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0641]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to conduct a study of war related illnesses and post-deployment health issues.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 12, 2004.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–0641 in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Study of War Related Illnesses and Post-Deployment Health Issues, VA Form 10–21060(NR).

OMB Control Number: 2900–0641.

Type of Review: Extension of a currently approved collection.

Abstract: VA has established the War-Related Illness and Injury Study Centers for war-related illnesses and post-development health issues. In order to develop a program of risk communication activities, VA must conduct a survey to gather information of sufficient scope and breadth to support the development of a risk communication strategy. A risk communication strategy will serve as a guide that clearly delineates the needs and requirement of the target audience for risk communication activities. The survey will be used to assess:

(1) The variety and prevalence of health conditions experienced by veterans of Vietnam, the Persian Gulf, and Bosnia-Kosovo and the perception of the extent that they are related to military service in a theater of operations;

(2) by region of deployment, the most frequently mentioned environmental exposures and medical countermeasures, and the level of concern of veterans regarding the perceived health impact of these exposures;

(3) which health problems, symptoms, and exposures veterans most want to receive information about; and to

(4) query veterans regarding their perception of the most desirable

medium for receiving health risk communications and the most appropriate/trustworthy representatives to deliver such messages.

Fulfillment of the survey will facilitate the development of risk communication programs that will effectively provide accurate and timely information regarding health risks that veterans may experience as a consequence of deployment related environmental exposures.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,625 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,500.

Dated: November 3, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–28368 Filed 11–12–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0219]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine eligibility of persons applying for healthcare benefits under Civilian Health and Medical Program-VA (CHAMPVA) and to adjudicate claims submitted under CHAMPVA.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 12, 2004.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0219'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (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 through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application for CHAMPVA Benefits, VA Form 10–10d.

b. CHAMPVA Claim Form, VA Form 10–7959a.

c. CHAMPVA—Other Health Insurance (OHI) Certification, VA Form 10–7959c.

d. CHAMPVA Potential Liability Claim, VA Form 10–7959d.

OMB Control Number: 2900–0219.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 10–10d is used to determine eligibility of persons applying for healthcare benefits under the CHAMPVA program.

b. VA Form 10–7959a is used to accurate adjudicate and process beneficiaries claims for payment/reimbursement of related healthcare expenses.

c. VA Form 10–7959c is used to systematically obtain other health insurance information and to correctly coordinate benefits among all liable parties.

d. VA Form 10–7959d is used to recover costs associated with healthcare services related to injury or illness caused by a third party.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Annual Burden: 394,667 hours.

a. VA Form 10–10d—3,417 hours.

b. VA Form 10–7959a—383,333 hours.

c. VA Form 10–7959c—5,000 hours.

d. VA Form 10–7959d—2,917 hours.

Estimated Average Burden Per Respondent:

a. VA Form 10–10d—10 minutes.

b. VA Form 10–7959a—10 minutes.

c. VA Form 10–7959c—10 minutes.

d. VA Form 10–7959d—7 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,375,500.

a. VA Form 10–10d—20,500.

b. VA Form 10–7959a—2,300,000.

c. VA Form 10–7959c—30,000.

d. VA Form 10–7959d—25,000.

Dated: November 3, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–28369 Filed 11–12–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0176]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to ensure that the participant is progressing and learning the skills necessary to carry out the duties of the occupational goal.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 12, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0176'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Monthly Record of Training and Wages, VA Form 28–1905c.

OMB Control Number: 2900–0176.

Type of Review: Extension of a currently approved collection.

Abstract: On-job trainers use VA Form 20–1905c to maintain accurate records on a trainee's progress toward their rehabilitation goals as well as recording the trainee's on-job training monthly wages. Trainers report these wages on the form only at the beginning of the program and at any time the trainee's wage rate changes. Following a trainee's completion of a vocational rehabilitation program, the trainer submits the form to VA for review by the trainee's case manager.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 12,000.

Dated: November 3, 2003.

By direction of the Acting Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–28370 Filed 11–12–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
November 13, 2003

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0005–FRL–7546–8]

RIN 2060–AG96

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for metal can surface coating operations located at major sources of hazardous air pollutants (HAP). The final standards implement section 112(d) of the Clean Air Act (CAA) by requiring these operations to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The final rule will protect air quality and promote public health by reducing emissions of HAP from facilities in the metal can surface coating source category. The HAP emitted by these facilities include ethylene glycol monobutyl ether (EGBE) and other glycol ethers, xylenes, hexane, methyl isobutyl ketone (MIBK), and methyl ethyl ketone (MEK). These HAP are associated with a variety of adverse health effects which include chronic health disorders (*e.g.*, birth defects and effects on the central nervous system, liver, and heart) and acute health disorders (*e.g.*, irritation of the lung, skin, and mucous membranes, and effects on the central nervous system), and possibly cancer. In general, these findings have only been shown with concentrations higher than those typically found in the ambient air. The final standards are expected to reduce nationwide HAP emissions from major sources in this source category by approximately 6,160 megagrams per year (Mg/yr) (6,800 tons per year (tpy)) or 70 percent from the baseline organic HAP emissions of 8,700 Mg/yr (9,600 tpy).

DATES: This rule is effective November 13, 2003. The incorporation by reference of certain publications listed in today's final rule is approved by the Director of the Federal Register as of November 13, 2003.

ADDRESSES: *Docket.* Docket ID No. OAR–2003–0005 (formerly Docket No. A–98–41) is located at the EPA Docket Center, EPA West, U.S. EPA (6102T), 1301 Constitution Avenue, NW., Washington, DC 20460.

Background Information Document. A background information document (BID) for the promulgated NESHAP may be obtained from the docket; the U.S. EPA Library (C267–01), Research Triangle Park, NC 27711, telephone number (919) 541–2777; or from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone number (703) 487–4650. Refer to ''National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans Background Information for Final Standards—Summary of Public Comments and Responses'' (EPA–453/R–03–009). The promulgation BID contains a summary of public comments made on the proposed standards and EPA responses to the public comments.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Almodóvar, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–0283; facsimile number (919) 541–5689; electronic mail address: *almodovar.paul@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The source category definition includes facilities that apply coatings during any stage of the can manufacturing process to metal cans or ends (including decorative tins) or to metal crowns or closures for any type of can body. In general, facilities that coat metal cans are covered under the North American Industrial Classification System (NAICS) codes listed in Table 1 of this preamble. However, facilities classified under other NAICS codes may be subject to the final standards if they meet the applicability criteria. Not all facilities classified under the NAICS codes in the following table will be subject to the standards because some of the classifications cover products outside the scope of the NESHAP for the surface coating of metal cans.

TABLE 1.—CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE FINAL STANDARDS

Subcategory	NAICS	Examples of potentially regulated entities
One- and two-piece draw and iron (D&I) can body coatings.	332431	Two-piece beverage can facility.
Sheetcoatings	332431, 332115, 332116, 332812, 332999	Three-piece food can facility, two-piece D&I facility, one-piece aerosol can facility, *etc.*
Three-piece can assembly coatings	332431	Can assembly facility.
End coatings	332431, 332812	End manufacturing facilities.

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 coating operation is regulated by this action, you should examine the applicability criteria in § 63.3481 of the final rule.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2003–0005 (formerly Docket No. A–98–41). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, EPA West, Room B–102, 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 Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Docket Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket

that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select ''search,'' then key in the appropriate docket identification number.

WorldWide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule will also be available on the WWW. Following the Administrator's signature, a copy of the final rule will be posted at *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 January 12, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce the requirements.

Outline. The information presented in this preamble is organized as follows:

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. The metal can (surface coating) category of major sources was listed on July 16, 1992 (57 FR 31576) under the Surface Coating Processes industry group. Major sources of HAP are those that emit or have the potential to emit considering controls equal to or greater than 9.1 Mg/yr (10 tpy) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112(c)(2) of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources, based on the criteria set out in section 112(d). The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. 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 standards are set at a level that ensures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the 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 five sources for categories or subcategories with fewer than 30 sources).

In developing the final NESHAP, we considered control options that are more stringent than the floor, taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. In the final rule, EPA is promulgating standards for both existing and new sources consistent with these statutory requirements.

C. What Are the Primary Sources of Emissions and What Are the Emissions?

The primary emission sources in metal can surface coating operations are coating application lines, drying and curing ovens, mixing and thinning areas, and equipment cleaning. Coating application lines and drying and curing ovens are the largest sources of HAP emissions. Recent reformulation efforts involving the primary coatings used in metal can surface coating operations are likely to continue as a result of the final rule and will serve to reduce HAP emissions from these sources. Mixing and thinning areas and equipment cleaning are smaller HAP emission sources, and work practice standards are used to limit the HAP emissions from these sources.

Available emission data collected during the development of the NESHAP show that the primary organic HAP emitted from metal can coating operations include EGBE and other glycol ethers, xylenes, hexane, MEK, and MIBK. Other significant organic HAP identified include isophorone, ethyl benzene, toluene, cumene, napthalene, and formaldehyde. Organic HAP emissions are regulated by the final metal can surface coating rule.

D. What Are the Health Effects Associated With HAP Emissions From the Surface Coating of Metal Cans?

Ethylene glycol monobutyl ether and other glycol ethers, xylenes, hexane, MEK, and MIBK account for 95 percent of the nationwide HAP emissions from this source category. These HAP are associated with a variety of adverse health effects which include chronic health disorders (*e.g.*, birth defects and effects on the central nervous system, liver, and heart) and acute health disorders (*e.g.*, irritation of the lung, skin, and mucous membranes, and effects on the central nervous system), and possibly cancer.

We do not have current detailed data on each of the facilities covered by these emission standards for this source category or on the people living around the facilities that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent that adverse effects do occur, the final rule will reduce emissions and subsequent exposures.

II. Summary of the Final Rule

A. What Source Categories and Subcategories Are Affected by the Final Rule?

The final rule applies to you if you own or operate a metal can surface coating operation that uses at least 5,700 liters (1,500 gallons (gal)) of coatings per year and is a major source, is located at a major source, or is part of a major source of HAP emissions, whether or not you manufacture the metal can substrate. The surface coating operations themselves are not required to be major sources of HAP emissions in order for the surface coating operations at a major source facility to be covered by the final rule.

A metal can surface coating facility is any facility that coats metal cans or ends (including decorative tins) or metal crowns or closures for any type of can during any stage of the can manufacturing process. It includes the coating of metal sheets for subsequent processing into cans or can parts, but not the coating of metal coils for cans or can parts. (Coil coating for cans and can parts is included in the NESHAP for the surface coating of metal coil; 40 CFR part 63, subpart SSSS). The source category does not include the coating of pails and drums, which is covered in the NESHAP for the surface coating of miscellaneous metal parts and products (40 CFR part 63, subpart MMMM).

We have established four subcategories in the metal can surface coating category, including: one- and two-piece D&I can body coating, sheetcoating, three-piece can body assembly coating, and end coating. Some metal can surface coating facilities include coating operations in more than one subcategory. In those cases, the facilities are subject to more than one emission limit.

You are not subject to the final rule if your coating operation is located at an area source. An area source of HAP is any facility that has the potential to emit HAP but is not a major source. You may establish area source status by limiting the source's potential to emit HAP through appropriate mechanisms available through the permitting authority.

The outcome of two delisting petitions that have been submitted to EPA could significantly affect which sources will be subject to the final rule. These petitions are the petition to delist EGBE from the HAP list and the petition to delist the two-piece beverage can segment from the source category list. Both petitions are being reviewed by EPA. If granted, the delisting of either EGBE or the two-piece beverage can segment could significantly decrease the number of sources affected by the final rule. Once decisions on the petitions are made, we will expeditiously determine whether changes to the final rule are warranted.

B. What Is the Affected Source?

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source to which a specific emission standard applies. The final rule for metal can surface coating defines the affected source as the collection of all surface coating operations within a facility associated with metal cans and ends (including decorative tins) or metal crowns or closures. Those operations involve the following: preparation of a coating for application (*e.g.*, mixing with thinners); process equipment involving storage, transfer, and handling; process equipment involving the application of coatings, thinners, and cleaning materials; handling of waste materials generated by a coating operation; and associated curing and drying equipment.

The affected source does not include research or laboratory equipment or janitorial, building, or facility maintenance operations.

C. What Are the Emission Limits, Operating Limits, and Other Standards?

Emission Limits. The final rule limits organic HAP emissions from each new or reconstructed affected source using the emission limits in Table 2 of this preamble. The final emission limits for each existing affected source are given in Table 3 of this preamble. You can choose from several compliance options in the final rule to achieve the emission limit that applies to your affected source. You can comply by applying materials (coatings and thinners) that meet the emission limit, either individually or collectively. You can also use a capture system and add-on control equipment to meet the emission limit, or you can comply by using a combination of both approaches. If you use a capture system and add-on control equipment, there are alternative control efficiency or outlet concentration limits that you may use to simplify and reduce your recordkeeping and reporting requirements. The alternative emission limits for affected sources using the control efficiency/outlet concentration compliance option are provided in Table 4 of this preamble.

TABLE 2.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES

If you apply surface coatings to metal cans or metal can parts in this subcategory. . .	For all coatings of this type . . .	Then, you must meet the following organic HAP emission limit in kilograms (kg) HAP/liter solids (lb HAP/gal solids):[1,2]
1. One- and two-piece D&I can body coating	a. Two-piece beverage cans—all coatings	0.04 (0.31).
	b. Two-piece food cans—all coatings	0.06 (0.50).
	c. One-piece aerosol cans—all coatings	0.08 (0.65).
2. Sheetcoating	Sheetcoating	0.02 (0.17).
3. Three-piece can assembly	a. Inside spray	0.12 (1.03).
	b. Aseptic side seam stripes on food cans	1.48 (12.37).

TABLE 2.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES—Continued

If you apply surface coatings to metal cans or metal can parts in this subcategory. . .	For all coatings of this type . . .	Then, you must meet the following organic HAP emission limit in kilograms (kg) HAP/liter solids (lb HAP/gal solids): [1,2]
	c. Nonaseptic side seam stripes on food cans	0.72 (5.96).
	d. Side seam stripes on general line nonfood cans.	1.18 (9.84).
	e. Side seam stripes on aerosol cans	1.46 (12.14).
4. End coating	a. Aseptic end seal compounds	0.06 (0.54).
	b. Nonaseptic end seal compounds	0.00 (0.00).
	c. Repair sprays	0.64 (5.34).

[1] If you apply surface coatings of more than one type within any one subcategory, you may calculate an overall subcategory emission limit according to 40 CFR 63.3531(i).
[2] Rounding differences in specific emission limits are attributable to unit conversions.

TABLE 3.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

If you apply surface coatings to metal cans or metal can parts in this subcategory . . .	For all coatings of this type . . .	Then, you must meet the following organic HAP emission limit in kg HAP/liter solids (lb HAP/gal solids): [1,2]
1. One- and two-piece D&I can body coating	a. Two-piece beverage cans—all coatings	0.07 (0.59).
	b. Two-piece food cans—all coatings	0.06 (0.51).
	c. One-piece aerosol cans—all coatings	0.12 (0.99).
2. Sheetcoating	Sheetcoating	0.03 (0.26).
3. Three-piece can assembly	a. Inside spray	0.29 (2.43).
	b. Aseptic side seam stripes on food cans	1.94 (16.16).
	c. Nonaseptic side seam stripes on food cans	0.79 (6.57).
	d. Side seam stripes on general line nonfood cans.	1.18 (9.84).
	e. Side seam stripes on aerosol cans	1.46 (12.14).
4. End coating	a. Aseptic end seal compounds	0.06 (0.54).
	b. Nonaseptic end seal compounds	0.00 (0.00).
	c. Repair sprays	2.06 (17.17).

[1] If you apply surface coatings of more than one type within any one subcategory, you may calculate an overall subcategory emission limit according to 40 CFR 63.3531(i).
[2] Rounding differences in specific emission limits are attributable to unit conversions.

TABLE 4.—EMISSION LIMITS FOR AFFECTED SOURCES USING THE CONTROL EFFICIENCY/OUTLET CONCENTRATION COMPLIANCE OPTION

If you use the control efficiency/outlet concentration option to comply with the emission limitations for any coating operation(s) . . .	Then you must comply with one of the following by using an emissions control system to . . .
1. In a new or reconstructed affected source	a. Reduce emissions of total HAP, measured as total hydrocarbons (THC) (as carbon),[1] by 97 percent; or b. Limit emissions of total HAP, measured as THC (as carbon) [1] to 20 parts per million by volume, dry (ppmvd) at the control device outlet and use a permanent total enclosure.
2. In an existing affected source	a. Reduce emissions of total HAP, measured as THC (as carbon),[1] by 95 percent; or b. Limit emissions of total HAP, measured as THC (as carbon) [1] to 20 ppmvd at the control device outlet and use a permanent total enclosure.

[1] You may choose to subtract methane from THC as carbon measurements.

Operating Limits. If you reduce emissions by using a capture system and add-on control device (other than a solvent recovery system for which you conduct a liquid-liquid material balance), the operating limits apply to you. These limits are site-specific parameter limits you determine during the initial performance test of the system. For capture systems that are not permanent total enclosures (PTE), you must establish average volumetric flow rates or duct static pressure limits for each capture device (or enclosure) in each capture system. For capture systems that are PTE, you must establish limits on average facial velocity or pressure drop across openings in the enclosure.

For thermal oxidizers, you must monitor the combustion temperature. For catalytic oxidizers, you must monitor the temperature immediately before and after the catalyst bed or you must monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for the catalytic oxidizer. For carbon adsorbers for which you do not conduct a liquid-liquid material balance, you must monitor the carbon bed temperature and the amount of steam or nitrogen used to desorb the bed. For condensers, you must monitor the outlet gas temperature from the condenser. For concentrators, you must monitor the temperature of the desorption concentrate stream and the

pressure drop of the dilute stream across the concentrator.

All site-specific parameter limits that you establish must reflect operation of the capture system and control devices during a performance test that demonstrates achievement of the emission limits during representative operating conditions.

Work Practice Standards. In lieu of emission standards, section 112(h) of the CAA allows work practice standards or other requirements to be established when a pollutant cannot be emitted through a conveyance or capture system or when measurement is not practicable because of technological and economic limitations. Many metal can surface coating facilities use work practice measures to reduce HAP emissions from mixing, cleaning, storage, and waste handling areas as part of their standard operating procedures. They use those measures to decrease solvent usage and minimize exposure to workers. However, we do not have data to accurately quantify the emissions reductions achievable by the work practice measures, and it is not feasible to measure emissions or enforce a numerical standard for emissions from those operations.

Based on information received from the metal can industry during the development of the NESHAP and information available from several similar coating industries for which NESHAP have already been promulgated, we identified a variety of work practice measures for cleaning, storage, mixing, and waste handling. If you use a capture system and add-on control device to reduce emissions, you are required to develop and implement a work practice plan that specifies practices and procedures to ensure that, at a minimum, all organic-HAP-containing liquids and waste materials are stored in closed containers; spills of all organic-HAP-containing materials are minimized; closed containers or pipes are used to transport all organic-HAP-containing materials; mixing vessels for organic-HAP-containing materials are kept closed except when adding to, removing, or mixing the contents; and organic HAP emissions are minimized during all cleaning operations.

If your affected source has an existing, documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, then your existing plan may be used to satisfy the requirement for a work practice plan.

Operations during Startup, Shutdown, or Malfunction. If you use a capture system and add-on control device for compliance, you are required to develop and operate according to a startup, shutdown, and malfunction plan (SSMP) during periods of startup, shutdown, or malfunction (SSM) of the capture system and add-on control device.

The NESHAP General Provisions at 40 CFR part 63, subpart A, codify certain procedures and criteria for all 40 CFR part 63 NESHAP and apply to you as indicated in the final rule. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities, such as notifications, recordkeeping and reporting, performance testing, and monitoring. The final rule refers to individual sections of the General Provisions to emphasize key sections that are relevant. However, unless specifically overridden in the final rule, all of the applicable General Provisions requirements apply to you.

D. What Are the Testing and Initial Compliance Requirements?

Existing affected sources must be in compliance with the final rule no later than November 13, 2006. New and reconstructed affected sources must be in compliance upon initial startup of the affected source or by November 13, 2003, whichever is later. However, affected sources are not required to demonstrate compliance until the end of the initial compliance period when they will have accumulated the necessary records to document the rolling 12-month organic HAP emission rate.

Compliance with the emission limits is based on a rolling 12-month organic HAP emission rate determined each month. Each 12-month period is a compliance period. The initial compliance period, therefore, is the 12-month period beginning on the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period begins on the compliance date and extends through the end of that month plus the following 12 months. In other words, the initial compliance period could be almost 13 months long, but all subsequent compliance periods will be 12 months long. We have defined ''month'' as a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility at sources where data are based on a business accounting period.

Being ''in compliance'' means that the owner or operator of the affected source meets the requirements to achieve the final emission limitations during the initial compliance period. However, the owner or operator will not have accumulated the records for the rolling 12-month organic HAP emission rate until the end of the initial compliance period. At the end of the initial compliance period, the owner or operator uses the data and records generated to determine whether or not the affected source is in compliance with the organic HAP emission limit and other applicable requirements for that period. If the affected source does not meet the applicable limit and other requirements, it is out of compliance for the entire compliance period.

Emission Limits. There are four options for complying with the emission limits, and the testing and initial compliance requirements vary accordingly.

Option 1: Compliance Based on the Compliant Material Option. If you demonstrate compliance based on the compliant material option, you must determine the mass of organic HAP in all coatings and thinners used each month during the initial compliance period and the volume fraction of coating solids in all coatings used each month during the initial compliance period. To determine the mass of organic HAP in coatings and thinners and the volume fraction of coating solids, you may use either manufacturer's data or test results using the test methods listed below. You may use alternative test methods provided that you get EPA approval in accordance with 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results will prevail for compliance and enforcement purposes unless, after consultation, you can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

- For organic HAP content, use Method 311 of 40 CFR part 63, appendix A.
- The final rule allows you to use nonaqueous volatile matter as a surrogate for organic HAP. If you choose that option, then use Method 24 of 40 CFR part 60, appendix A, to determine nonaqueous volatile matter.
- For volume fraction of coating solids, use either information from the supplier or manufacturer of the material, American Society of Testing and Materials (ASTM) Method D2697–86(1998), or ASTM Method D6093–97.

To demonstrate initial compliance based on the compliant materials option, you are required to demonstrate that the organic HAP content of each coating meets the applicable emission

limits and that you use no organic-HAP-containing thinners.

Option 2: Compliance Based on the Emission Rate without Add-on Controls Option. If you demonstrate compliance based on the emission rate without add-on controls option, you must determine the mass of organic HAP in all coatings and thinners used in each coating type segment each month during the initial compliance period, and the volume fraction of coating solids in all coatings in each coating type segment used each month during the initial compliance period.

To determine the mass of organic HAP in coatings and thinners and the volume fraction of coating solids, you may use either manufacturer's data or test results using the test methods listed below. You may use alternative test methods provided that you get EPA approval in accordance with 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results will prevail for compliance and enforcement purposes unless, after consultation, you can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

- For organic HAP content, use Method 311 in 40 CFR part 63, appendix A.
- The final rule allows you to use nonaqueous volatile matter as a surrogate for organic HAP. If you choose that option, use Method 24 in 40 CFR part 60, appendix A to determine nonaqueous volatile matter.
- For volume fraction of coating solids, use either information from the supplier or manufacturer of the material, ASTM Method D2697–86 (Reapproved 1998), or ASTM Method D6093–97.

To demonstrate initial compliance based on the emission rate without add-on controls option, you are required to demonstrate that the total mass of organic HAP in all coatings and thinners in each coating type segment divided by the total volume of coating solids in that coating type segment meets the applicable emission limit. For the emission rate without add-on controls option, you are required to perform the following:

- Determine the quantity of each coating and thinner used in each coating type segment.
- Determine the mass of organic HAP in each coating and thinner in each coating type segment.
- Determine the volume fraction of coating solids for each coating in each coating type segment.
- Calculate the total mass of organic HAP in all materials in each coating type segment and total volume of coating solids in each coating type segment for each month of the initial compliance period. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the ratio of the total mass of organic HAP for the materials used in each coating type segment to the total volume of coating solids used in the segment.
- Record the calculations and results and include them in your Notification of Compliance Status.

Alternatively, if you apply coatings in more than one coating type segment within a subcategory, you may calculate an overall HAP emission limit for the subcategory and demonstrate compliance by including all coatings and thinners in all coating type segments in the subcategory in calculating the ratio of total mass of organic HAP to total volume of coating solids. If you use this approach, you must use the subcategory limit throughout the 12-month initial compliance period and may not switch between compliance with limits for individual coating type segments and an overall limit. Also, if you follow this approach, you may not include coatings in different subcategories in determining your overall HAP limit.

Option 3: Compliance Based on the Emission Rate with Add-on Controls Option. If you use a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, your testing and initial compliance requirements are as follows:

- 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.
- Determine the mass of organic HAP in each material and the volume fraction of coating solids for each coating used each month of the initial compliance period.
- Calculate the organic HAP emissions from the controlled coating operations using the capture and control efficiencies determined during the performance test and the total mass of organic HAP in materials used in controlled coating operations.
- Calculate the ratio of the total mass of organic HAP emissions to the total volume of coating solids used each month of the initial compliance period.
- Record the calculations and results and include them in the Notification of Compliance Status.

If you use a capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, you must determine both the efficiency of the capture system and the emissions reduction efficiency of the control device. To determine the capture efficiency, you must either verify the presence of a PTE using EPA Method 204 of 40 CFR part 51, appendix M, or use one of the protocols in § 63.3544 of the final rule to measure capture efficiency. If you have a PTE, apply and dry all the materials within the PTE, and route all exhaust gases from the PTE to a control device, then you may assume 100 percent capture.

To determine the emissions reduction efficiency of the control device, you must conduct measurements of the inlet and outlet gas streams. The test must 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. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981.
- Method 4 to determine stack moisture.
- 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.

If you use a solvent recovery system, you may determine the overall control efficiency using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you are required to measure the amount of all materials used in the affected source during each month of the initial compliance period and determine the volatile matter contained in these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system each month of the compliance period. Then, you must compare the amount recovered to the amount used to determine the overall control efficiency and apply this efficiency to the ratio of organic HAP to coating solids for the materials used. You must record the

calculations and results and include them in your Notification of Compliance Status.

Alternatively, if you apply coatings in more than one coating type segment within a subcategory, you may calculate an overall HAP emission limit for the subcategory and demonstrate compliance by including all coatings and thinners in all coating type segments in the subcategory in calculating the ratio of total mass of organic HAP to total volume of coating solids. If you use this approach, you must use the subcategory limit throughout the compliance period and may not switch between compliance with limits for individual coating type segments and an overall limit. Also, if you follow this approach, you may not include coatings in different subcategories in determining your overall HAP limit.

Operating Limits. As mentioned above, you must establish operating limits as part of the initial performance test of an emission capture and control system. The operating limits are the values of certain parameters measured for capture systems and control devices during the most recent performance test that demonstrated compliance with the emission limits. The final rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry. Table 4 to the final rule summarizes the monitoring requirements for each type of control device.

You are required to install, calibrate, maintain, and continuously operate all monitoring equipment according to the manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in § 63.3547 of the final rule. If you use control devices other than those identified in the final rule, you must submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

Work Practice Standards. If you use a capture system and control device for compliance, you are required to develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions from storage, mixing, material handling, and waste handling operations. That plan must include a description of all steps taken to minimize emissions from those sources (*e.g.*, using closed storage containers, implementing practices to minimize emissions during filling and transfer of contents from containers, using spill minimization techniques, *etc.*). You must make the plan available for inspection if the Administrator requests to see it.

Operations during Startup, Shutdown, or Malfunction. If you use a capture system and control device for compliance, you are required to develop and operate according to an SSMP during periods of SSM of the capture system and control device.

Option 4: Compliance Based on the Control Efficiency/Outlet Concentration Option. If you use a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, you may meet either of the applicable alternative limits summarized in Table 4 of this preamble instead of the organic HAP emission rate limits summarized in Tables 2 and 3 of this preamble. Prior to the initial performance test, you are required to install control device parameter monitoring equipment to be used to demonstrate compliance with the capture and control efficiencies (or the capture efficiency of the capture system and the oxidizer outlet concentration) and to establish operating limits to be achieved on a continuous basis. During the initial compliance test, you must use the control device parameter monitoring equipment to establish parameter values that represent your operating requirements for the control systems. You must record the initial performance test results and include them in the Notification of Compliance Status.

If you use a capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, you must verify that the efficiency of the capture system is 100 percent and determine the emissions reduction efficiency of the control device. To verify the capture efficiency, you must either verify the presence of a PTE using EPA Method 204 of 40 CFR part 51, appendix M, or use one of the protocols in § 63.3544 of the final rule to measure capture efficiency. If you have a PTE, apply and dry all the materials within the PTE and route all exhaust gases from the enclosure to a control device, then you may assume 100 percent capture.

To determine the emissions reduction efficiency of the control device, you must conduct measurements of the inlet and outlet gas streams. The test must 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. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981.
- Method 4 to determine stack moisture.
- 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.

If you use a solvent recovery system, you may determine the overall control efficiency using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you are required to measure the amount of all materials used in the affected source during each month of the initial compliance period and determine the volatile matter contained in these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system each month of the initial compliance period. Then, you must compare the amount recovered to the amount used to determine the overall control efficiency and apply this efficiency to the ratio of organic HAP to coating solids for the materials used. You must record the calculations and results and include them in your Notification of Compliance Status.

Operating Limits. As mentioned above, you must establish operating limits as part of the initial performance test of an emission capture and control system. The operating limits are the values of certain parameters measured for capture systems and control devices during the most recent performance test that demonstrated compliance with the emission limits. The final rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry. Table 4 to the final rule summarizes the monitoring requirements for each type of control device.

You are required to install, calibrate, maintain, and continuously operate all monitoring equipment according to the manufacturer's specifications and ensure that the CPMS meet the requirements in § 63.3547 of the final rule. If you use control devices other than those identified in the final rule, you must submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to

be monitored is retained by EPA and is not delegated to States.

Work Practice Standards. If you use a capture system and control device for compliance, you are required to develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions from storage, mixing, material handling, and waste handling operations. That plan must include a description of all steps taken to minimize emissions from those sources (*e.g.*, using closed storage containers, implementing practices to minimize emissions during filling and transfer of contents from containers, using spill minimization techniques, *etc.*). You must make the plan available for inspection if the Administrator requests to see it.

Operations during Startup, Shutdown, or Malfunction. You are required to develop and operate your capture system and control device according to an SSMP during periods of SSM of the capture system and control device.

E. What Are the Continuous Compliance Provisions?

Emission Limits. Option 1: Compliance Based on the Compliant Material Option. If you demonstrate compliance with the final emission limits based on the compliant material option, you will demonstrate continuous compliance if, for each 12-month compliance period, the organic HAP content of each coating used does not exceed the applicable emission limit and you use no thinner that contains organic HAP.

Option 2: Compliance Based on the Emission Rate without Add-on Controls Option. If you demonstrate compliance with the final emission limits based on the emission rate without add-on controls option, you will demonstrate continuous compliance if, for each rolling 12-month compliance period, the ratio of organic HAP in all coatings and thinners in each coating type segment to coating solids in that coating type segment is less than or equal to the applicable emission limit. You follow the same procedures for calculating the organic HAP to coating solids ratio that you used for the initial compliance period. If you use an alternative calculated overall HAP emission limit for all coating type segments within a subcategory, you use the same procedures that you used for the initial compliance period. Whichever approach you use must be used consistently throughout each 12-month compliance period.

Option 3: Compliance Based on the Emission Rate with Add-on Controls Option. For each coating operation on which you use a capture system and control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, you must use the continuous parameter monitoring results for the month in determining the mass of organic HAP emissions. If the monitoring results indicate no deviations from the operating limits and there were no bypasses of the control device, you would assume the capture system and control device are achieving the same percent emissions reduction efficiency as they did during the most recent performance test in which compliance was demonstrated. You would then apply that percent reduction to the total mass of organic HAP in materials used in controlled coating operations to determine the monthly emission rate from those operations. If there were any deviations from the operating limits during the month or any bypasses of the control device, you must account for them in the calculation of the monthly emission rate by assuming the capture system and control device were achieving zero emissions reduction during the periods of deviation, unless you have other data indicating the actual efficiency of the emission capture system and add-on control device, and the use of these data is approved by the Administrator. Then, you would determine the annual average emission rate by calculating the ratio for the most recent 12-month period.

For each coating operation on which you use a solvent recovery system and conduct a liquid-liquid material balance each month, you will use the liquid-liquid material balance to determine control efficiency. To determine the overall control efficiency, you must measure the amount of all materials used during each month and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the month, calculate the overall control efficiency, and apply it to the total mass of organic HAP in the materials used to determine total organic HAP emissions. Then, you would determine the annual average emission rate by taking the average of the monthly ratios for the most recent 12-month period.

Operating Limits. If you use a capture system and control device, the final rule requires 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 are 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 must monitor for potential bypass of the control device to demonstrate that organic HAP emissions from each emission point within the affected source are being routed to 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 continuous monitoring to ensure that any bypass line valve or damper is closed when the control device is operating.
- Automatic shutdown system to stop the coating 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 your monitoring plan.

Work Practice Standards. If you use an emission capture system and control device for compliance, you are required to implement on an ongoing basis the work practice plan you developed during the initial compliance period. If you did not develop a plan for reducing organic HAP emissions or you do not implement the plan, this would be a deviation from the work practice standards.

Operations during Startup, Shutdown, or Malfunction. If you use a capture system and control device for compliance, you are required to develop and operate according to an SSMP during periods of SSM of the capture system and control device.

Option 4: Compliance Based on the Control Efficiency/Outlet Concentration Option. If you use a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, your testing and continuous compliance requirements are the same as those in option 3. For add-on control systems, you are required to install control device parameter monitoring equipment to be used to demonstrate compliance with the operating requirements for add-on control systems in the final rule. If you operate a CPMS, it has to collect data at least every 15 minutes, and you must have at least three data points per hour to have a valid hour of data. You must operate the CPMS at all times that the surface coating operation and control systems

are operating. You also must conduct proper maintenance of the CPMS and maintain an inventory of necessary parts for routine repairs of the CPMS. Using the data collected with the CPMS, you must calculate and record the average values of each operating parameter according to the specified averaging times.

F. What Are the Notification, Recordkeeping, and Reporting Requirements?

You are required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in the final rule. The General Provisions notification requirements include initial notifications, notification of performance test if you are complying using a capture system and control device, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports.

Initial Notification. If the final standards apply to you as a new or reconstructed affected source, you must send a notification to the EPA Regional Office in the Region where your facility is located and to your State agency within 120 days after the date of initial startup or 120 days after publication of the final rule, whichever is later. Existing affected sources must send the Initial Notification within 1 year after publication of the final rule. The report notifies us and your State agency that you have constructed a new facility, reconstructed an existing facility, or have an existing facility that is subject to the final rule. Thus, it allows you and the permitting authority to plan for compliance activities. You also need to send a notification of planned construction or reconstruction of a source that would be subject to the final rule and apply for approval to construct or reconstruct.

Notification of Performance Test. If you demonstrate compliance by using a capture system and control device for which you do not conduct a liquid-liquid material balance, you must conduct a performance test. For a new or reconstructed affected source, the performance test must take place no later than 180 days after initial startup or 180 days after publication of the final rule, whichever is later. For an existing source, you must conduct the performance test no later than the compliance date. You must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin, as indicated in the General Provisions for the NESHAP.

Notification of Compliance Status. Your compliance procedures depend on which compliance option you choose. For each compliance option, you must send us a Notification of Compliance Status within 30 days of the end of the initial compliance period. In the notification, you must certify whether the affected source has complied with the final standards, identify the option(s) you used to demonstrate initial compliance, summarize the data and calculations supporting the compliance demonstration, and describe how you will determine continuous compliance.

If you elect to comply by using a capture system and control device for which you conduct performance tests, you must provide the results of the tests. Your notification must also include the measured range of each monitored parameter, the operating limits established during the performance test, and information showing whether the affected source complied with its operating limits during the initial compliance period.

Recordkeeping Requirements. You are required to keep for 5 years records of reported information and all other information necessary to document compliance with the final rule. As required under the General Provisions, records for the 2 most recent years must be kept onsite; records for the other 3 years may be kept offsite. Records pertaining to the design and operation of control and monitoring equipment must be kept for the life of the equipment.

Depending on the compliance option that you choose, you must keep records of the following:

- Organic HAP content, volatile matter content, coating solids content, and quantity of the coatings and other materials applied.
- All documentation supporting Initial Notifications and Notifications of Compliance Status.

If you demonstrate compliance by using a capture system and control device, you also need to keep records of the following:

- The occurrence and duration of each SSM of the emission capture system and control device.
- All maintenance performed on the capture system and control device.
- Actions taken during SSM that are different from the procedures specified in the affected source's SSMP.
- All information necessary to demonstrate conformance with the affected source's SSMP when the plan procedures are followed.
- All information necessary to demonstrate conformance with the affected source's plan for minimizing emissions from mixing, storage, and waste handling operations.
- Each period during which a CPMS is malfunctioning or inoperative (including out-of-control periods).
- All required measurements needed to demonstrate compliance with the standards.
- All results of performance tests.

The final rule requires you to collect and keep records according to your monitoring plan. Failure to collect and keep the specified minimum data is a deviation that is separate from deviations from emission limits, operating limits, or work practice standards.

Deviations, as determined from those records, must be recorded and also reported. A deviation is any instance when any requirement or obligation established by the final rule including, but not limited to, the emission limits, operating limits, and work practice standards, is not met.

If you use a capture system and control device to reduce organic HAP emissions, you must make your SSMP available for inspection if the Administrator requests to see it. The plan must stay in your records for the life of the affected source or until the affected source is no longer subject to the final standards. If you revise the plan, you need to keep the previous superceded versions on record for 5 years following the revision.

Periodic Reports. Each year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you must submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you must include them in the report as follows:

- Report each deviation from the emission limit.
- If you use an emission capture system and control device, report each deviation from the work practice standards.
- If you use an emission capture system and control device, report each deviation from an operating limit and report each time a bypass line diverts emissions from the control device to the atmosphere.
- Report other specific information on the periods of time and details of deviations that occurred.

You must also include an explanation in each semiannual report if a change occurs that might affect the compliance status of the affected source or if you

change to another option for meeting the applicable emission limit.

Other Reports. You are required to submit reports for periods of SSM of the capture system and control device. If the procedures you follow during any SSM are inconsistent with your plan, you must report those procedures in immediate reports required by the General Provisions in § 63.10(d)(5)(ii) and in your semiannual reports.

III. What Are the Significant Comments and Changes Since Proposal?

Refer to the BID (''National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans Background Information for Final Standards—Summary of Public Comments and Responses,'' August 2003, EPA–453/R–03–009), for EPA's responses to each public comment; available in Docket No. OAR–2003–0005 (formerly Docket No. A–98–41).

A. End Coatings—Repair Spray Coatings

Comment: Two commenters stated that post-coat repair spray for easy-open ends was not covered by the proposed rule. The commenters stated that the proper classification of repair spray under the proposed NESHAP could be complicated by the various ways in which it is regulated under current State standards for reducing volatile organic compounds. The commenters recommended that EPA establish a specific emission limit for this type of coating, which has the potential for more use in the future because of increasing customer demand for easy-open ends.

Response: Using the coatings data and information provided by the commenters, we have added a separate emission limit for repair spray coatings under the end coating subcategory (formerly called end lining) in the final rule. As indicated by the name, repair spray coatings are used to cover breaks in the coating that are caused during the formation of the score in easy-open ends or to provide, after the manufacturing process, an additional protective layer for corrosion resistance. The emission limit in the final rule for repair spray coatings is 2.06 kilograms (kg) HAP/liter solids (17.17 lb HAP/gal solids) for existing affected sources and 0.64 kg HAP/liter solids (5.34 lb HAP/gal solids) for new affected sources. We also included a definition for ''repair spray'' in the definitions section of the final rule.

B. Affected Source Clarification

Comment: Some commenters expressed confusion regarding how we defined ''affected source'' and ''new affected source'' in the proposed rule.

Response: In § 63.3482(b) of the final rule, an affected source is defined as the collection of all coating operations used for surface coating of metal cans or ends (including decorative tins) or metal crowns or closures. Section 63.3482(c) also states that an affected source is a new affected source if you commenced its construction after January 15, 2003 (proposal date) and the construction is of a completely new metal can surface coating source where previously no metal can surface coating source had existed. Based on the definition of ''reconstruction,'' adding capacity to an existing source with a new coating line would not trigger reconstruction, but replacing an old line with a new line could trigger reconstruction if the cost criteria for replacing equipment are met (meeting or exceeding the cost criteria is more likely for smaller sources). The General Provisions define ''reconstruction'' in terms of a ''comparable new source.'' If the existing facility has multiple coating lines as part of its affected source, it is unlikely that adding a single coating line to replace an old one would cost more than 50 percent of the fixed capital cost that would be required to construct a comparable new source.

We have also clarified that the final rule applies to affected sources that use at least 5,700 liters (1,500 gal) of coatings per year. This means that the coating usage limit applies to the entire source rather than to each subcategory.

C. Monitoring, Recordkeeping, and Reporting Costs

Comment: The main industry trade association disagreed with the estimated costs of the proposed rule. The association estimated that the initial years 1 to 3 industrywide monitoring, recordkeeping, and reporting (MRR) compliance costs would total $7,068,854, which is $5,431,678 more than the EPA estimate. Also, it estimated that the average annualized industrywide MRR costs per year for year 4 and beyond would be $10,674,080, which is $3,190,207 per year more than EPA's estimate.

Response: We have changed the information collection request (ICR) cost estimates for each facility to include recalculated estimates for the amount of time associated with reading, interpreting, and summarizing regulations; rereading the regulation on a continuing basis as questions of interpretation arise during the time facilities are planning and preparing for compliance; securing outside legal and consultant services related to regulatory review and interpretation; and covering recurrent labor costs for reviewing the regulation.

We have increased the cost estimates for computer equipment and software to include upgrades for larger facilities, as well as initial computer purchases for smaller facilities. The initial estimates included a cost of $2,000 for the initial purchase for smaller facilities. The final rule includes a cost of computer equipment and software of $3,500 (per facility) for all facilities.

We have adjusted our monitoring equipment costs for add-on control devices to include installation costs, equipment costs for PTE, and costs for monitoring software. We have updated our monitoring cost estimates to include a total of $19,500 per facility instead of $4,000 per facility.

We have included regenerative thermal oxidizer (RTO) operation and maintenance costs because they were inadvertently excluded from the previous calculations. Assuming that operating time will require 30 minutes per shift and equipment maintenance will require 1 hour per week, the overall RTO capital equipment costs increase by $1.38 million.

The cost estimate as proposed used 1999 labor rates, and the current analysis uses 2001 labor rates for the metal can industry. The costs for labor requirements, computer equipment, monitoring equipment for add-on control devices, installation for the monitoring equipment, and operation and maintenance of recordkeeping and reporting are $6,823,709 for years 1 through 3 and $8,367,800 per year for year 4 and beyond.

D. Performance Test Costs

Comment: One commenter stated that the costs of performance tests were not properly accounted for in the ICR because EPA assumed the costs for performance testing would be amortized over 5 years. The commenter stated the costs of performance tests are more likely to be, on average, $25,000 per facility which would result in a total industry cost of $3,050,000, incurred and expended in year 3, compared with EPA's annualized cost estimate for performance tests of $1,147,000.

Response: We estimated the initial cost of performance testing on a control device basis. Therefore, a typical metal can surface coating facility would incur costs of $38,400 ($19,200 × 2) because there are an average of two control devices per facility in the database. Our estimated costs remain valid. However, we agree with the commenter that the initial performance testing is most likely to be conducted in the third year after

promulgation to ensure compliance with the final rule requirements, and we adjusted the appropriate cost estimated in the ICR to reflect this.

E. Calculation of Organic HAP Emission Reduction

As part of a compliance demonstration, an owner or operator of an affected source has to calculate the organic HAP emission reduction for operations with add-on capture and control systems. The equation used to calculate the emission reduction achieved with such systems in the proposed rule decreased the overall control efficiency to account for time periods when there were deviations. Using time periods alone to account for periods of deviations assumes essentially steady-state operations over the compliance period, with little variation in the quantity of coating materials used or their HAP content. While steady-state conditions may occur at some operations, others may use different quantities of coating materials or materials with different HAP content. To allow flexibility for operations that could vary over time, we have revised the equation to determine overall control efficiency.

The terms associated with the total time period of deviations (T_{dev}) and coating operations (T_{op}) that were in the proposed Equation 1 do not appear in Equation 1 of § 63.3541 of the final rule. Instead, Equation 1 of the final rule includes a term H_{unc} to represent the total mass (kg) of organic HAP in the coatings, thinners, and cleaning materials used during periods of deviations. In addition, the final rule allows a source to demonstrate that some level of control efficiency may be achieved during periods of deviations (*i.e.*, the efficiency of emission reduction is not necessarily zero during malfunctions) by showing sufficient supporting information. Two additional equations related to Equation 1 have been included to calculate total mass of organic HAP in cleaning materials and total mass of organic HAP used during periods of deviations.

IV. Summary of Environmental, Energy, and Economic Impacts

The final rule will affect 142 existing major source metal can surface coating facilities. The impacts are presented relative to a baseline reflecting the level of control prior to the final rule. Because of consolidation in the metal can surface coating industry, we do not expect there to be any net growth within the industry in the next 5 years. Therefore, the estimate of the impacts of the final rule is presented for existing facilities only. For a facility that would already be in compliance with the emission limits in the final rule, only MRR cost impacts were estimated. For more information on how impacts were estimated, *see* the BID for the final rule (EPA–453/R–03–009).

A. What Are the Air Impacts?

We estimated that compliance with the emission limits in the final rule will reduce nationwide organic HAP emissions from existing major affected sources by approximately 6,160 Mg/yr (6,800 tpy). That represents a reduction of 70 percent from the baseline organic HAP emissions of 8,700 Mg/yr (9,600 tpy). Table 5 of this preamble gives a summary of the primary air impacts for major coating segment groupings associated with implementation of the final rule.

TABLE 5.—SUMMARY OF PRIMARY AIR IMPACTS BY SUBCATEGORY OR COATING SEGMENT FOR EXISTING SOURCES

Subcategory or coating segment	Emissions before NESHAP, Mg/yr (tpy)	Emissions after NESHAP, Mg/yr (tpy)	Emissions reduction, Mg/yr (tpy)	Percent reduction
Two-piece D&I beverage can body coating.	4,468 (4,922)	1,644 (1,811)	2,824 (3,111)	63
Two-piece D&I food can body coating.	765 (843)	139 (153)	626 (690)	82
One-piece D&I aerosol can body coating.	16 (18)	16 (18)	0 (0)	0
Sheetcoating	2,289 (2,522)	404 (445)	1,885 (2,077)	82
Three-piece food can assembly coating.	370 (408)	285 (314)	85 (94)	23
Three-piece nonfood can assembly coating.	45 (50)	38 (42)	6 (7)	14
End coating	763 (841)	34 (38)	729 (803)	95
Total	8,718 (9,603)	2,560 (2,820)	6,158 (6,783)	70

B. What Are the Cost Impacts?

Cost impacts include the costs of recordkeeping and reporting, capital equipment costs, performance testing costs, monitoring equipment costs, and material costs as facilities comply with the final rule. Recordkeeping and reporting include all labor hours related to the tracking of coating usage, the cost of purchasing computer equipment, the labor hours required to write and submit reports, and the labor hours required to train personnel. Capital equipment costs for the facilities that choose to use capture equipment and add-on control devices to comply with the final rule include costs for the purchase, installation, and operation of the equipment. Performance testing costs for the facilities that choose to use add-on control devices to comply with the final standards include the labor hours required for a contractor to conduct performance testing on each control device used, and to develop the associated reports for recordkeeping and reporting purposes. Monitoring equipment costs include the purchase of thermocouples, pressure sensors, and data loggers and the installation of equipment.

Material costs include the cost of switching to low- or no-HAP coatings. For facilities that choose to use low- or no-HAP coatings to comply with the final standards, coatings with lower-HAP content are assumed to be more expensive than coatings with higher-HAP content. According to information received from industry, we assumed the incremental cost increase to be $2.00 per gal for inside sprays and $5.00 per gal for side seam stripes, which are used in three-piece food can assembly and three-piece nonfood can assembly subcategories; and $2.00 per gal for nonaseptic end seal compounds, which are used in the end coating subcategory. These incremental costs are the estimated additional costs that each

facility would incur, rather than the total material investment.

We estimate the total annualized costs for compliance with the final rule to be $58.7 million. Those estimates include $8.4 million for MRR requirements, $4.1 million for coating material costs, and $46.2 million for capital equipment.

C. What Are the Economic Impacts?

We prepared an economic impact analysis (EIA) to provide an estimate of the facility and market impacts of the final rule, as well as the social costs. The goal of the EIA was to estimate the market response of the metal can coating and production facilities to the final rule and to determine the economic impacts. Compliance costs are associated with chemical substitution during the coating process, the installation of pollution control equipment, and recordkeeping and reporting activities. We estimate the total annualized compliance costs to be $58.7 million per year divided across 142 major source facilities (owned by 30 companies).

In terms of industry impacts, metal can producers could experience a total projected decrease of $16.4 million in pretax earnings, which reflects the compliance costs associated with the production of metal cans and the resulting reductions in revenues due to the increase in the prices of the directly affected product markets and reduced quantities purchased. Through the market impacts described above, the final rule is expected to create both gainers and losers within the metal can industry. Approximately one-third of the modeled facilities may experience an increase in pretax earnings as a result of price increases that exceed their compliance costs per unit. In contrast, the remaining two-thirds of metal can facilities may experience losses in pretax earnings. In addition, the EIA indicates that none of the facilities within the metal can market are at risk of closure because of the final rule. We project overall employment to decrease by 242 employees, or 1.0 percent, as a result of the final rule.

Based on the market analysis, we project the total social cost of the final rule to be $55.7 million. The estimated social costs differ slightly from the projected engineering costs because social costs account for producer and consumer behavior. Consumers are projected to bear $34.6 million or 60 percent of the total social costs of the final rule. Producers could bear $21.6 million, or 40 percent of the total social costs. For more information, consult the EIA report supporting the final rule.

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

Based on information from the industry survey responses, we found no indication that the use of low- or no-organic-HAP content coatings and thinners at existing sources would result in any increase or decrease in non-air health, environmental, and energy impacts. There will be no change in utility requirements associated with the use of these materials, so there will be no change in the amount of energy consumed as a result of the material conversion. Also, there will be no significant change in the amount of materials used or the amount of waste produced.

Many facilities in the draw and iron (D&I) can body coating and sheetcoating subcategories currently use add-on emission control devices to meet existing requirements; consequently, we anticipate that facilities in those subcategories will use add-on controls to comply with the final rule. Secondary air and energy impacts will result from fuel combustion needed to operate these control devices, which are expected to be RTO.

The RTO require electricity and the combustion of natural gas to operate and maintain operating temperatures. The electricity costs of using RTO are included in the capital expenditures. By-products of fuel combustion required to generate electricity and maintain RTO operating temperature include emission of carbon monoxide, nitrogen oxides, sulfur dioxide, and particulate matter less than 10 microns in diameter. Assuming the electricity required for RTO operation is generated at coal-fired plants built since 1978 and using air pollution emissions factors, we estimate that generation of electricity required to operate RTO at all affected D&I can body coating and sheetcoating facilities will result in increases in the following air pollutants: carbon monoxide, 35 tpy; nitrogen oxides, 156 tpy; sulfur dioxide, 775 tpy; and particulate matter, 70 tpy.

Energy impacts include the consumption of electricity and natural gas needed to operate RTO. We estimate that electricity consumption from the operation of RTO at all D&I can body coating and sheetcoating facilities will increase by 34,500,000 kilowatt hours per year, and fuel energy consumption resulting from burning natural gas will increase by 672,300 million British thermal units per year. We estimate that no significant secondary water or solid waste impacts will result from the operation of emission control devices.

E. Potential Changes to the Impacts

The outcome of two delisting petitions that have been submitted to EPA could significantly affect the estimated impacts of the final rule. These petitions are the petition to delist EGBE from the HAP list and the petition to delist the two-piece beverage can segment from the source category list. Both petitions are being reviewed by EPA. If granted, the delisting of either EGBE or the two-piece beverage can segment could significantly decrease the number of sources affected by the final rule and could affect the final emission limits. Thus, the estimated impacts could change. Once decisions on the petitions are made, we will expeditiously determine whether changes to the final rule are warranted. If changes are appropriate, EPA will take prompt action to issue such changes and to ensure that facilities do not incur unnecessary compliance expenses. The EPA will also work with affected facilities to ensure that they are not subject to inappropriate sanctions.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, 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 a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The information collection requirements are not enforceable 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. Those 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 maintaining records of all coating and thinning materials data and calculations used to determine compliance. This information includes the amount (kg) used during each 12-month compliance period, mass fraction organic HAP, and, for coating materials only, mass fraction of solids.

If an add-on control device is used, records must be kept of the capture efficiency of the capture system, destruction or removal efficiency of the add-on control device, and the monitored operating parameters. In addition, records must be kept of each calculation of the affected sourcewide emissions for each monthly and rolling 12-month compliance period and all data, calculations, test results, and other supporting information used to determine this value. The recordkeeping requirements are only for the specific information needed to determine compliance.

The MRR burden for this collection (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to be approximately 7,815 labor hours per year at a total annual cost of $2.27 million. That estimate includes reviewing the regulation, conducting a one-time performance test (with repeat tests where needed), and submitting the report(s); one-time submission of a SSMP with semiannual reports for any event when the procedures in the plan were not followed; semiannual compliance status reports; and recordkeeping.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's rules are listed in 40 CFR part 9. When this ICR is approved by OMB, the EPA will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in the final rule.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For the purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code ranging from 500 to 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's final rule on small entities, EPA has concluded that the final rule will not have a significant economic impact on a substantial number of small entities. Based on SBA NAICS-based size definitions and reported sales and employment data, we identified 13 small business, or 43.3 percent of the metal can companies. Small businesses are expected to incur 2 percent of the total industry annualized compliance costs of $58.7 million. We estimate that 10 of the 13 small businesses may experience an impact below 1 percent of total company sales, two small firms may experience impacts between 1 and 3 percent, and one firm may experience an impact above 3 percent of sales. For more information, consult the EIA report entitled ''Economic Impact Analysis for the Final Metal Can NESHAP'' in Docket No. OAR–2003–0005 (formerly Docket No. A–98–41).

Although the final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the final rule on small entities. Small entities will be afforded extensive flexibility in demonstrating compliance through pollution prevention rather than the use of add-on control technology. We included compliance options that give small entities flexibility in choosing the most cost effective and least burdensome alternative for their operation. For example, a facility could purchase and use low-HAP coatings and other materials (*i.e.*, pollution prevention) that meet the final standards instead of using add-on capture and control systems. This method of compliance can be demonstrated with minimum burden by using purchase and usage records. No testing of materials would be required as facility owners could show that their coatings and other materials meet the emission limits by providing formulation data supplied by the manufacturer.

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 aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final

rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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 the aggregate, or the private sector in any 1 year. The maximum total annualized cost of the final rule for any year has been estimated to be less than $58.7 million. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule is not subject to the requirements of section 203 of UMRA.

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'' is defined in the Executive Order to include rules 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. The final rule does not have a significant Federal intergovernmental mandate within the meaning of section 202 of UMRA, and it will not result in costs to small governments that are equal to, or greater than, 1 percent of revenue. Thus, Executive Order 13132 does not apply to the final rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comments on the proposed rule from State and local officials. A summary of the comments received from two State agencies and EPA's responses to those comments is provided in sections 2.1, 2.5, 2.6, 2.7, and 2.10 of the promulgation BID (EPA–453/R–03–009).

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate metal can surface coating operations. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is not economically significant, and it is based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113, § 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The final rule includes the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A through F, and 311. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods/performance specifications. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A through 204F, and 311. The search and review results have been documented and are placed in the docket (Docket No. OAR–2003–0005, formerly Docket No. A–98–41) of the final rule.

Three VCS described below were identified as acceptable alternatives to EPA test methods for the purposes of the final rule.

The VCS ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' is cited in the final rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. That part of ANSI/ASME PTC 19.10–1981, Part 10, is an acceptable alternative to Method 3B.

The two VCS, ASTM D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' and ASTM D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer,'' are cited in the final rule as acceptable alternatives to EPA Method 24 to determine the volume fraction of

coating solids. Currently, EPA Method 24 does not have a procedure for determining the volume of solids in coatings. Those VCS augment the procedures in Method 24, which currently states that volume solids content be calculated from the coating manufacturer's formulation.

Six VCS: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 91), and ASTM D5403–93 are already incorporated by reference (IBR) in EPA Method 24. Five VCS: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are IBR in EPA Method 311.

In addition to the VCS the EPA uses in the final rule, the search for emissions measurement procedures identified 14 other VCS. The EPA determined that 11 of the 14 VCS identified for measuring emissions of the HAP or surrogates subject to emission standards in the final rule were impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, EPA does not intend to adopt those VCS for that purpose. (See Docket No. OAR–2003–0005, formerly Docket No. A–98–41, for further information on the methods.)

Three of the 14 VCS identified in the 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 VCS body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; and ISO/CD 17895, ''Paints and Varnishes—Determination of the Volatile Organic Compound Content of Water-based Emulsion Paints,'' for EPA Method 24.

Listed in §§ 63.3521, 63.3531, 63.3541, 63.3543, 63.3544, 63.3545, 63.3551, 63.3553, 63.3554, and 63.3555 of the final rule are the EPA testing methods. 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 the final 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 final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. § 804(2). The final rule will be effective November 13, 2003.

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: August 14, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of 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.*

■ 2. Section 63.14 is amended by revising paragraphs (b)(24) and (25) and (i)(3) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(24) ASTM D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' IBR approved for §§ 63.3521(b)(1), 63.4141(b)(1), 63.4741(b)(1), 63.4941(b)(1), and 63.5160(c).

(25) ASTM D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer,'' IBR approved for §§ 63.3521(b)(1), 63.4141(b)(1), 63.4741(b)(1), 63.4941(b)(1), and 63.5160(c).

* * * * *

(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), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), and 69.9323(a)(3).

* * * * *

■ 3. Part 63 is amended by adding subpart KKKK to read as follows:

Subpart KKKK—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

What This Subpart Covers

Sec.

Emission Limitations

General Compliance Requirements

Notifications, Reports, and Records

Compliance Requirements for the Compliant Material Option

Compliance Requirements for the Emission Rate Without Add-On Controls Option

Compliance Requirements for the Emission Rate With Add-On Controls Option

Subpart KKKK—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

What This Subpart Covers

§ 63.3480 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for metal can surface coating facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.3481 Am I subject to this subpart?

(a) Except as provided in paragraph (c) of this section, the source category to which this subpart applies is surface coating of metal cans and ends (including decorative tins) and metal crowns and closures. It includes the subcategories listed in paragraphs (a)(1) through (4) of this section. Surface coating is the application of coatings to a substrate using, for example, spray guns or dip tanks.

(1) *One- and two-piece draw and iron can body coating.* The one- and two-piece draw and iron can body coating subcategory includes all coating processes involved in the manufacture of can bodies by the draw and iron process. This subcategory includes three distinct coating type segments reflecting the coatings appropriate for cans with different end uses. Those are two-piece beverage can body coatings, two-piece food can body coatings, and one-piece aerosol can body coatings.

(2) *Sheetcoating.* The sheetcoating subcategory includes all of the flat metal sheetcoating operations associated with the manufacture of three-piece cans, decorative tins, crowns, and closures.

(3) *Three-piece can body assembly coating.* The three-piece can body assembly coating subcategory includes all of the coating processes involved in the assembly of three-piece metal can bodies. The subcategory includes five distinct coating type segments reflecting the coatings appropriate for cans with different end uses. Those are inside spray on food cans, aseptic side seam stripes on food cans, nonaseptic side seam stripes on food cans, side seam stripes on general line nonfood cans, and side seam stripes on aerosol nonfood cans.

(4) *End coating.* The end coating subcategory includes the application of end seal compounds and repair spray coatings to metal can ends. This subcategory includes three distinct coating type segments reflecting the end seal compounds and repair sprays appropriate for can ends with different end uses. Those are aseptic end seal compounds, nonaseptic end seal compounds, and repair spray coatings.

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.3482, that uses 5,700 liters (1,500 gallons (gal)) per year, or more, of coatings in the source category defined in paragraph (a) of this section and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP). A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(c) This subpart does not apply to surface coating that meets the criteria of paragraphs (c)(1) through (5) of this section.

(1) Surface coating conducted at a source that uses only coatings, thinners, and cleaning materials that contain no organic HAP, as determined according to § 63.3521(a).

(2) Surface coating subject to any other NESHAP in this part as of November 13, 2003.

(3) Surface coating and cleaning activities that use research or laboratory equipment or that are part of janitorial, building, and facility maintenance operations.

(4) Surface coating of continuous metal coil that may subsequently be used in manufacturing cans. Subpart SSSS of this part covers surface coating performed on a continuous metal coil substrate.

(5) Surface coating of metal pails, buckets, and drums. Future subpart MMMM of this part will cover surface coating of all miscellaneous metal parts and products not explicitly covered by another subpart.

63.3482 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source.

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are used for surface coating of metal cans and ends (including decorative tins), or metal crowns or closures:

(1) All coating operations as defined in § 63.3561;

(2) All storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) An affected source is a new affected source if you commenced its construction after January 15, 2003 by installing new coating equipment. New coating equipment is equipment used to perform metal can surface coating at a facility where no metal can surface coating was previously performed and the construction is of a completely new metal can surface coating source where previously no metal can surface coating source had existed.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.3483 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstration described in §§ 63.3520, 63.3530, 63.3540, and 63.3550.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section.

(1) If the initial startup of your new or reconstructed affected source is before November 13, 2003, the compliance date is November 13, 2003.

(2) If the initial startup of your new or reconstructed affected source occurs after November 13, 2003, the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is November 13, 2006.

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source or November 13, 2003 whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or November 13, 2006, whichever is later.

(d) You must meet the notification requirements in § 63.3510 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.3490 What emission limits must I meet?

(a) For a new or reconstructed affected source, you must limit organic HAP emissions to the atmosphere to no more than the emission limit(s) in Table 1 to this subpart that apply to you during each 12-month compliance period, determined according to the requirements in § 63.3521, § 63.3531, or § 63.3541; or if you control emissions with an emissions control system using the control efficiency/outlet concentration option as specified in § 63.3491(d), you must reduce organic HAP emissions to the atmosphere to no more than the limit(s) in Table 3 to this subpart, determined according to the requirements of § 63.3551. If you perform surface coating in more than one subcategory or utilize more than one coating type within a subcategory, then you must meet the individual emission limit(s) for each subcategory and coating type included.

(b) For an existing affected source, you must limit organic HAP emissions to the atmosphere to no more than the emission limit(s) in Table 2 to this subpart that apply to you during each 12-month compliance period, determined according to the requirements in § 63.3521, § 63.3531, or § 63.3541; or if you control emissions with an emissions control system using the control efficiency/outlet concentration option as specified in § 63.3491(d), you must reduce organic HAP emissions to the atmosphere to no more than the limit(s) in Table 3 to this subpart, determined according to the requirements of § 63.3551. If you perform surface coating in more than one subcategory or utilize more than one coating type within a subcategory, then you must meet the individual emission limit(s) for each subcategory and coating type included.

(c) If you perform surface coating in different subcategories as described in § 63.3481(a)(1) through (4), then the coating operations in each subcategory constitute a separate affected source, and you must conduct separate compliance demonstrations for each applicable subcategory and coating type emission limit in paragraphs (a) and (b) of this section and reflect those separate determinations in notifications, reports, and records required by §§ 63.3510, 63.3511, and 63.3512, respectively.

§ 63.3491 What are my options for meeting the emission limits?

You must include all coatings and thinners used in all surface coating operations within a subcategory or coating type segment when determining whether the organic HAP emission rate is equal to or less than the applicable emission limit in § 63.3490. To make that determination, you must use at least one of the four compliance options listed in paragraphs (a) through (d) of this section. You may apply any of the compliance options to an individual coating operation or to multiple coating operations within a subcategory or coating type segment as a group. You may use different compliance options for different coating operations or at different times on the same coating operation. However, you may not use different compliance options at the same time on the same coating operation. If you switch between compliance options for any coating operation or group of coating operations, you must document that switch as required by § 63.3512(c), and you must report it in the next semiannual compliance report required in § 63.3511.

(a) *Compliant material option.* Demonstrate that the organic HAP content of each coating used in the coating operation(s) is less than or equal to the applicable emission limit in § 63.3490, and that each thinner used contains no organic HAP. You must meet all the requirements of §§ 63.3520, 63.3521, and 63.3522 to demonstrate compliance with the emission limit using this option.

(b) *Emission rate without add-on controls option.* Demonstrate that, based on the coatings and thinners used in the coating operation(s), the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.3490, calculated as a rolling 12-month emission rate and determined on a monthly basis. You must meet all the requirements of §§ 63.3530, 63.3531, and 63.3532 to demonstrate compliance with the emission limit using this option.

(c) *Emission rate with add-on controls option.* Demonstrate that, based on the coatings and thinners used in the

coating operation(s) and the emission reductions achieved by emission capture systems and add-on controls, the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.3490, calculated as a rolling 12-month emission rate and determined on a monthly basis. If you use this compliance option, you must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) used for purposes of complying with this subpart meet the operating limits required in § 63.3492, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3541(i), and that you meet the work practice standards required in § 63.3493. You must meet all the requirements of §§ 63.3540 through 63.3547 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

(d) *Control efficiency/outlet concentration option.* Demonstrate that, based on the emission reductions achieved by emission capture systems and add-on controls, total HAP emissions measured as total hydrocarbon (THC) are reduced by 95 percent or greater for existing sources, or 97 percent or greater for new or reconstructed sources, or that outlet THC emissions are less than or equal to 20 parts per million by volume, dry basis (ppmvd). If you use this compliance option, you must have a capture device that meets EPA Method 204 of 40 CFR part 51, Appendix M criteria for a permanent total enclosure (PTE). You must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) used for purposes of complying with this subpart meet the operating limits required in § 63.3492, and that you meet the work practice standards required in § 63.3493. You must meet all the requirements of §§ 63.3550 through 63.3557 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

§ 63.3492 What operating limits must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any operating limits.

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option or the control efficiency/outlet concentration option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.3541(i), you must meet the operating limits specified in Table 4 to this subpart. Those operating limits apply to the emission capture and control systems for the coating operation(s) used for purposes of complying with this subpart. You must establish the operating limits during the performance test according to the requirements in § 63.3546 or § 63.3556, and you must meet the operating limits at all times after you establish them.

(c) If you use an add-on control device other than those listed in Table 4 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).

§ 63.3493 What work practice standards must I meet?

(a) For any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any work practice standards.

(b) If you use the emission rate with add-on controls option or the control efficiency/outlet concentration option to comply with the emission limitations, you must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s) for which you use those options; or you must meet an alternative standard as provided in paragraph (c) of this section. The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be stored in closed containers.

(2) Spills of organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) As provided in § 63.6(g), we, the U.S. Environmental Protection Agency (U.S. EPA), may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.3500 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.3491(a) and (b), must be in compliance with the applicable emission limit in § 63.3490.

(2) Any coating operation(s) for which you use the emission rate with add-on controls option, as specified in § 63.3491(c), or the control efficiency/outlet concentration option, as specified in § 63.3491(d), must be in compliance with the emission limitations as specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) The coating operation(s) must be in compliance with the applicable emission limit in § 63.3490 at all times.

(ii) The coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3492 at all times, except for those for which you use a solvent recovery system and conduct liquid-liquid material balances according to § 63.3541(i). The operating limits apply only to capture systems and control devices used for purposes of complying with this subpart.

(iii) The coating operation(s) must be in compliance with the work practice standards in § 63.3493 at all times.

(b) You must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i).

(c) If your affected source uses an emission capture system and add-on control device for purposes of complying with this subpart, you must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). The plan must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation

equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures.

§ 63.3501 What parts of the General Provisions apply to me?

Table 5 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.3510 What notifications must I submit?

(a) *General.* You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial notification.* You must submit the Initial Notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after November 13, 2003, whichever is later. For an existing affected source, you must submit the Initial Notification no later than November 13, 2004.

(c) *Notification of compliance status.* You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in § 63.3520, § 63.3530, § 63.3540, or § 63.3550 that applies to your affected source. The Notification of Compliance Status must contain the information specified in paragraphs (c)(1) through (9) of this section and in § 63.9(h).

(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 the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in § 63.3520, § 63.3530, § 63.3540, or § 63.3550 that applies to your affected source.

(4) Identification of the compliance option or options specified in § 63.3491 that you used on each coating operation in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (c)(6)(i) and (ii) of this section.

(i) A description and statement of the cause of the deviation.

(ii) If you failed to meet the applicable emission limit in § 63.3490, include all the calculations you used to determine the kilogram (kg) organic HAP emitted per liter of coating solids used. You do not need to submit information provided by the materials suppliers or manufacturers or test reports.

(7) For each of the data items listed in paragraphs (c)(7)(i) through (iv) of this section that is required by the compliance option(s) you used to demonstrate compliance with the emission limit, include an example of how you determined the value, including calculations and supporting data. Supporting data can include a copy of the information provided by the supplier or manufacturer of the example coating or material or a summary of the results of testing conducted according to § 63.3521(a), (b), or (c). You do not need to submit copies of any test reports.

(i) Mass fraction of organic HAP for one coating and for one thinner.

(ii) Volume fraction of coating solids for one coating.

(iii) Density for one coating and one thinner, except that if you use the compliant material option, only the example coating density is required.

(iv) The amount of waste materials and the mass of organic HAP contained in the waste materials for which you are claiming an allowance in Equation 1 of § 63.3531.

(8) The calculation of kg organic HAP emitted per liter of coating solids used for the compliance option(s) you used, as specified in paragraphs (c)(8)(i) through (iii) of this section.

(i) For the compliant material option, provide an example calculation of the organic HAP content for one coating, using Equation 1 of § 63.3521.

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions for each month, the calculation of the total volume of coating solids used each month, and the calculation of the 12-month organic HAP emission rate, using Equations 1, 1A through 1C, 2, and 3, respectively, of § 63.3531.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1 and 1A through 1C of § 63.3531; the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3531; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3541, and Equations 2, 3, and 3A through 3C of § 63.3541, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3541, as applicable; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.3541.

(9) For the emission rate with add-on controls option or the control efficiency/outlet concentration option, you must include the information specified in paragraphs (c)(9)(i) through (iv) of this section. The requirements in paragraphs (c)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3541(i).

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a PTE or a measurement of the emission capture system efficiency. Include a description of the protocol followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.3493.

§ 63.3511 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (7) of this section. The semiannual compliance reporting requirements may be satisfied by reports required under other parts of the Clean Air Act (CAA), as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this

section. Note that the information reported for each of the months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.3520, § 63.3530, § 63.3540, or § 63.3550 that applies to your affected source and ends on June 30 or December 31, whichever occurs first following the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each 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.

(iv) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of the date specified in paragraph (a)(1)(iii) of this section.

(2) *Inclusion with title V report.* Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a semiannual compliance report pursuant to this section along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all required information concerning deviations from any emission limitation in this subpart, its submission will be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (v) of this section and the information specified in paragraphs (a)(4) through (7) and (c)(1) of this section that is applicable to your affected source.

(i) Company name and address.

(ii) 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.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31. Note that the information reported for each of the 6 months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(iv) Identification of the compliance option or options specified in § 63.3491 that you used on each coating operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates you used each option.

(v) If you used the emission rate without add-on controls or the emission rate with add-on controls compliance option (§ 63.3491(b) or (c)), the calculation results for each rolling 12-month organic HAP emission rate during the 6-month reporting period.

(4) *No deviations.* If there were no deviations from the emission limitations, operating limits, or work practice standards in §§ 63.3490, 63.3492, and 63.3493 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used the emission rate with add-on controls option or the control efficiency/outlet concentration option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out of control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out of control during the reporting period.

(5) *Deviations: compliant material option.* If you used the compliant material option and there was a deviation from the applicable emission limit in § 63.3490, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) Identification of each coating used that deviated from the emission limit, each thinner used that contained organic HAP, and the dates and time periods each was used.

(ii) The calculation of the organic HAP content (using Equation 1 of § 63.3521) for each coating identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (*e.g.*, information provided by coating suppliers or manufacturers, or test reports).

(iii) The determination of mass fraction of organic HAP for each coating and thinner identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (*e.g.*, information provided by material suppliers or manufacturers, or test reports).

(iv) A statement of the cause of each deviation.

(6) *Deviations: emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.3490, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iii) of this section.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.3490.

(ii) The calculations used to determine the 12-month organic HAP emission rate for the compliance period in which the deviation occurred. You must provide the calculations for Equations 1, 1A through 1C, 2, and 3 in § 63.3531; and if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3531(e)(3). You do not need to submit background data supporting these calculations (*e.g.*, information provided by materials suppliers or manufacturers, or test reports).

(iii) A statement of the cause of each deviation.

(7) *Deviations: emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. That includes periods of startup, shutdown, and malfunction during which deviations occurred.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.3490.

(ii) The calculations used to determine the 12-month organic HAP emission rate for each compliance period in which a deviation occurred. You must provide the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1 and 1A through 1C of § 63.3531 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3531(e)(3); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3531; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3541, and Equations 2, 3, and 3A through 3C of § 63.3541, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3541; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.3541. You do not need to submit the background data supporting these calculations (*e.g.*, information provided by materials suppliers or manufacturers, or test reports).

(iii) The date and time that each malfunction started and stopped.

(iv) A brief description of the CPMS.

(v) The date of the latest CPMS certification or audit.

(vi) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vii) The date, time, and duration that each CPMS was out of control, including the information in § 63.8(c)(8).

(viii) The date and time period of each deviation from an operating limit in Table 4 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 startup, shutdown, or malfunction or during another period.

(ix) A summary of the total duration of each deviation from an operating limit in Table 4 to this subpart and 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.

(x) A breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(xi) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(xii) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xiii) For each deviation from the work practice standards, a description of the deviation; the date and time period of the deviation; and the actions you took to correct the deviation.

(xiv) A statement of the cause of each deviation.

(8) *Deviations: control efficiency/outlet concentration option.* If you used the control efficiency/outlet concentration option, and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(8)(i) through (xii) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred.

(i) The date and time that each malfunction started and stopped.

(ii) A brief description of the CPMS.

(iii) The date of the latest certification or audit of the CPMS.

(iv) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(v) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(vi) The date and time period of each deviation from an operating limit in Table 4 to this subpart; date and time of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(vii) A summary of the total duration of each deviation from an operating limit in Table 4 to this subpart and 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.

(viii) A breakdown of the total duration of the deviations from the operating limits in Table 4 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(ix) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(x) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xi) For each deviation from the work practice standards, a description of the deviation; the date and time period of the deviation; and the actions you took to correct the deviation.

(xii) A statement of the cause of each deviation.

(b) *Performance test reports.* If you use the emission rate with add-on controls option or the control efficiency/outlet concentration option, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *Startup, shutdown, malfunction reports.* If you used the emission rate with add-on controls option or the control efficiency/outlet concentration option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your SSMP, you must include the information specified in § 63.10(d) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your SSMP, you must submit an immediate startup, shutdown, and malfunction report as described in paragraphs (c)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the SSMP.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.3512 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep

the records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of organic HAP and density for each coating and thinner and the volume fraction of coating solids for each coating. If you conducted testing to determine mass fraction of organic HAP, density, or volume fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each compliance period, the records specified in paragraphs (c)(1) through (4) of this section.

(1) A record of the coating operations at which you used each compliance option and the time periods (beginning and ending dates and times) you used each option.

(2) For the compliant material option, a record of the calculation of the organic HAP content for each coating, using Equation 1 of § 63.3521.

(3) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1, 1A through 1C, and 2 of § 63.3531 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3531(e)(3); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3531; and the calculation of each 12-month organic HAP emission rate, using Equation 3 of § 63.3531.

(4) For the emission rate with add-on controls option, records of the calculations specified in paragraphs (c)(4)(i) through (v) of this section.

(i) The calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1 and 1A through 1C of § 63.3531 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3531(e)(3).

(ii) The calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3531.

(iii) The calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3541, and Equations 2, 3, and 3A through 3C of § 63.3541, as applicable.

(iv) The calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3541.

(v) The calculation of each 12-month organic HAP emission rate, using Equation 5 of § 63.3541.

(5) For the control efficiency/outlet concentration option, records of the measurements made by the CPMS used to demonstrate compliance. For any coating operation(s) for which you use this option, you do not have to keep the records specified in paragraphs (d) through (g) of this section.

(d) A record of the name and volume of each coating and thinner used during each compliance period.

(e) A record of the mass fraction of organic HAP for each coating and thinner used during each compliance period.

(f) A record of the volume fraction of coating solids for each coating used during each compliance period.

(g) A record of the density for each coating used during each compliance period; and, if you use either the emission rate without add-on controls or the emission rate with add-on controls compliance option, the density for each thinner used during each compliance period.

(h) If you use an allowance in Equation 1 of § 63.3531 for organic HAP contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.3531(e)(3) or otherwise managed in accordance with applicable Federal and State waste management regulations, you must keep records of the information specified in paragraphs (h)(1) through (3) of this section.

(1) The name and address of each TSDF or other applicable waste management location to which you sent waste materials for which you use an allowance in Equation 1 of § 63.3531, a statement of which subparts under 40 CFR parts 262, 264, 265, and 266 apply to the facility and the date of each shipment.

(2) Identification of the coating operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 of § 63.3531.

(3) The methodology used in accordance with § 63.3531(e)(3) to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF or other applicable waste management location each month and the methodology to determine the mass of organic HAP contained in these waste materials. That must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(i) You must keep records of the date, time, and duration of each deviation.

(j) If you use the emission rate with add-on controls option or the control efficiency/outlet concentration option, you must keep the records specified in paragraphs (j)(1) through (8) of this section.

(1) For each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records required to show continuous compliance with each operating limit specified in Table 4 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 § 63.3544(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 §§ 63.3543 and 63.3544(b) through (e) including the records specified in paragraphs (j)(5)(i) through (iii) of this section that apply to you.

(i) *Records for a liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH) as measured by Method 204A or F of appendix M to 40 CFR part 51 for each material used in the coating operation and the total TVH for all materials used during each capture efficiency test run 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 (TTE) 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 TTE or a building enclosure.

(ii) *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 TTE 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 TTE or a building enclosure.

(iii) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.3544(e) if applicable.

(6) The records specified in paragraphs (j)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.3545 or § 63.3555.

(i) Records of each add-on control device performance test conducted according to § 63.3543 or § 63.3553 and § 63.3545 or § 63.3555.

(ii) Records of the coating operation 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 § 63.3546 or § 63.3556 and to document compliance with the operating limits as specified in Table 4 to this subpart.

(8) A record of the work practice plan required by § 63.3493 and documentation that you are implementing the plan on a continuous basis.

§ 63.3513 In what form and for how long must I keep my records?

(a) Your records must be kept in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database.

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.3520 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements in § 63.3521. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. The initial compliance demonstration includes the calculations according to § 63.3521 and supporting documentation showing that, during the initial compliance period, you used no coating with an organic HAP content that exceeded the applicable emission limit in § 63.3490 and you used no thinners that contained organic HAP.

§ 63.3521 How do I demonstrate initial compliance with the emission limitations?

You may use the compliant material option for any individual coating operation, for any group of coating operations within a subcategory or coating type segment, or for all the coating operations within a subcategory or coating type segment. You must use either the emission rate without add-on controls option, the emission rate with add-on controls option, or the control efficiency/outlet concentration option for any coating operation in the affected source for which you do not use that option. To demonstrate initial compliance using the compliant material option, the coating operation or group of coating operations must use no coating with an organic HAP content that exceeds the applicable emission limit in § 63.3490 and must use no thinner that contains organic HAP as determined according to this section. Any coating operation for which you use the compliant material option is not required to meet the operating limits or work practice standards required in §§ 63.3492 and 63.3493, respectively. You must conduct a separate initial compliance demonstration for each one and two-piece draw and iron can body coating, sheetcoating, three-piece can body assembly coating, and end coating affected source. You must meet all the requirements of this section for the coating operation or group of coating operations using this option. Use the procedures in this section on each coating and thinner in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration (*e.g.*, mixing or thinning). Do not include any coatings or thinners used on coating operations for which you use the emission rate without add-on controls option, the emission rate with add-on controls option, or the control efficiency/outlet concentration option. You do not need to redetermine the HAP content of coatings or thinners that have been reclaimed onsite and reused in the coating operation(s) for which you use the compliant material option, provided these materials in their condition as received were demonstrated to comply with the compliant material option.

(a) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each coating and thinner used during the compliance period by using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.*, 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (*e.g.*, 0.763).

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence unless, after consultation, a regulated source can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for the mass fraction of organic HAP in those solvent blends listed in Table 6 or 7 to this subpart. If you use the tables, you must use the values in Table 6 to this subpart for all solvent blends that match Table 6 entries, and you may only use Table 7 to this subpart if the solvent blends in the materials you use do not match any of the solvent blends in Table 6 and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 (40 CFR part 63, appendix A) test indicate higher values than those listed on Table 6 or 7 to this subpart, the Method 311 results will take precedence.

(b) *Determine the volume fraction of coating solids for each coating.* You must determine the volume fraction of coating solids (liters of coating solids per liter of coating) for each coating used during the compliance period by a test or by information provided by the supplier or the manufacturer of the material as specified in paragraphs (b)(1) and (2) of this section. If test results obtained according to paragraph (b)(1) of this section do not agree with the information obtained under paragraph (b)(2) of this section, the test results will take precedence.

(1) *ASTM Method D2697–86 (Reapproved 1998) or D6093–97.* You may use ASTM Method D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings'' (incorporated by reference, see § 63.14), or D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer'' (incorporated by reference, *see* § 63.14), to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids. If these values cannot be determined using these methods, the owner/operator may submit an alternative technique for determining the values for approval by the Administrator.

(2) *Information from the supplier or manufacturer of the material.* You may obtain the volume fraction of coating solids for each coating from the supplier or manufacturer.

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–90 or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–90 test results and the supplier's or manufacturer's information, the test results will take precedence.

(d) *Calculate the organic HAP content of each coating.* Calculate the organic HAP content, kg organic HAP per liter coating solids, of each coating used during the compliance period, using Equation 1 of this section.

$$H_c = \frac{(D_c)(W_c)}{V_s} \qquad \text{(Eq. 1)}$$

Where:

H_c = Organic HAP content of the coating, kg organic HAP per liter coating solids.

D_c = Density of coating, kg coating per liter coating, determined according to paragraph (c) of this section.

W_c = mass fraction of organic HAP in the coating, kg organic HAP per kg coating, determined according to paragraph (a) of this section.

V_s = Volume fraction of coating solids, liter coating solids per liter coating, determined according to paragraph (b) of this section.

(e) *Compliance demonstration.* The organic HAP content for each coating used during the initial compliance period, determined using Equation 1 of this section, must be less than or equal to the applicable emission limit in § 63.3490 and each thinner used during the initial compliance period must contain no organic HAP, determined according to paragraph (a) of this section. You must keep all records required by §§ 63.3512 and 63.3513. As part of the Notification of Compliance Status required in § 63.3510, you must identify the coating operation(s) for which you used the compliant material option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no coatings for which the organic HAP content exceeded the applicable emission limit in § 63.3490, and you used no thinners that contained organic HAP, determined according to paragraph (a) of this section.

§ 63.3522 How do I demonstrate continuous compliance with the emission limitations?

(a) For each compliance period, to demonstrate continuous compliance, you must use no coating for which the organic HAP content, determined using Equation 1 of § 63.3521, exceeds the applicable emission limit in § 63.3490 and use no thinner that contains organic HAP, determined according to § 63.3521(a). A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3520 is the end of a compliance period consisting of that month and the preceding 11 months.

(b) If you choose to comply with the emission limitations by using the compliant material option, the use of any coating or thinner that does not meet the criteria specified in paragraph (a) of this section is a deviation from the emission limitations that must be reported as specified in §§ 63.3510(b)(6) and 63.3511(a)(5).

(c) As part of each semiannual compliance report required by § 63.3511, you must identify the coating operation(s) for which you used the compliant material option. If there were no deviations from the emission limitations in § 63.3490, submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because you used no coating for which the organic HAP content exceeded the applicable

emission limit in § 63.3490, and you used no thinner or cleaning material that contained organic HAP, determined according to § 63.3521(a).

(d) You must maintain records as specified in §§ 63.3512 and 63.3513.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.3530 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3531. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the calculations according to § 63.3531 and supporting documentation showing that, during the initial compliance period, the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.3490.

§ 63.3531 How do I demonstrate initial compliance with the emission limitations?

You may use the emission rate without add-on controls option for any coating operation, for any group of coating operations within a subcategory or coating type segment, or for all of the coating operations within a subcategory or coating type segment. You must use either the compliant material option, the emission rate with add-on controls option, or the control efficiency/outlet concentration option for any coating operation in the affected source for which you do not use this option. If you use the alternative overall emission limit for a subcategory according to paragraph (i) of this section to demonstrate compliance, however, you must include all coating operations in all coating type segments in the subcategory to determine compliance with the overall limit. To demonstrate initial compliance using the emission rate without add-on controls option, the coating operation or group of coating operations must meet the applicable emission limit in § 63.3490, but is not required to meet the operating limits or work practice standards in §§ 63.3492 and 63.3493, respectively. You must conduct a separate initial compliance demonstration for each one and two-piece draw and iron can body coating, sheetcoating, three-piece can body assembly coating, and end coating affected source. You must meet all the requirements of this section to demonstrate initial compliance with the applicable emission limit in § 63.3490 for the coating operation(s). When calculating the organic HAP emission rate according to this section, do not include any coatings or thinners used on coating operations for which you use the compliant material option, the emission rate with add-on controls option, or the control efficiency/outlet concentration option or coating operations in a different affected source in a different subcategory. Use the procedures in this section on each coating and thinner in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration (*e.g.*, mixing or thinning). You do not need to redetermine the mass of organic HAP in coatings or thinners that have been reclaimed onsite and reused in the coating operation(s) for which you use the emission rate without add-on controls option.

(a) *Determine the mass fraction of organic HAP for each material.* Determine the mass fraction of organic HAP for each coating and thinner used during each month according to the requirements in § 63.3521(a).

(b) *Determine the volume fraction of coating solids for each coating.* Determine the volume fraction of coating solids for each coating used during each month according to the requirements in § 63.3521(b).

(c) *Determine the density of each material.* Determine the density of each coating and thinner used during each month from test results using ASTM Method D1475–90, information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–90 test results and such other information sources, the test results will take precedence.

(d) *Determine the volume of each material used.* Determine the volume (liters) of each coating and thinner used during each month by measurement or usage records.

(e) *Calculate the mass of organic HAP emissions.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all coatings and thinners used during each month minus the organic HAP in certain waste materials. Calculate it using Equation 1 of this section.

$$H_e = A + B - R_w \qquad \text{(Eq. 1)}$$

Where:

H_e = Total mass of organic HAP emissions during the month, kg.

A = Total mass of organic HAP in the coatings used during the month, kg, as calculated in Equation 1A of this section.

B = Total mass of organic HAP in the thinners used during the month, kg, as calculated in Equation 1B of this section.

R_w = Total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF or other applicable waste management location for treatment or disposal during the month, kg, determined according to paragraph (e)(3) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(1) Calculate the mass of organic HAP in the coatings used during the month using Equation 1A of this section.

$$A = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A = Total mass of organic HAP in the coatings used during the month, kg.

$Vol_{c,i}$ = Total volume of coating, i, used during the month, liters.

$D_{c,i}$ = Density of coating, i, kg coating per liter coating.

$W_{c,i}$ = Mass fraction of organic HAP in coating, i, kg organic HAP per kg coating.

m = Number of different coatings used during the month.

(2) Calculate the mass of organic HAP in the thinners used during the month using Equation 1B of this section.

$$B = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B = Total mass of organic HAP in the thinners used during the month, kg.

$Vol_{t,j}$ = Total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = Density of thinner, j, kg per liter.

$W_{t,j}$ = Mass fraction of organic HAP in thinner, j, kg organic HAP per kg thinner.

n = Number of different thinners used during the month.

(3) If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF or other applicable waste management location in Equation 1 of this section, then you must determine it according to paragraphs (e)(3)(i) through (iv) of this section.

(i) You may include in the determination only waste materials that are generated by coating operations for which you use Equation 1 of this section and that will be treated or disposed of by a facility regulated as a TSDF under 40 CFR part 262, 264, 265, or 266 or otherwise managed in accordance with applicable Federal and State waste management regulations. The TSDF or other applicable waste management location may be either offsite or onsite. You may not include organic HAP contained in wastewater.

(ii) You must determine either the amount of the waste materials sent to a TSDF, or other applicable waste management location, during the month, or the amount collected and stored during the month and designated for future transport to a TSDF or other applicable waste management location. Do not include in your determination any waste materials sent to a TSDF or other applicable waste management location during a month if you have already included them in the amount collected and stored during that month or a previous month.

(iii) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (e)(3)(ii) of this section.

(iv) You must document the methodology you used to determine the amount of waste materials and the total mass of organic HAP they contain as required in § 63.3512(h). To the extent that waste manifests include this information, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(f) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used which is the combined volume of coating solids for all the coatings used during each month using Equation 2 of this section.

$$V_{st} = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(V_{s,i}\right) \qquad \text{(Eq. 2)}$$

Where:

V_{st} = Total volume of coating solids used during the month, liters.

$Vol_{c,i}$ = Total volume of coating, i, used during the month, liters.

$V_{s,i}$ = Volume fraction of coating solids for coating, i, liter solids per liter coating, determined according to § 63.3521(b).

m = Number of coatings used during the month.

(g) *Calculate the organic HAP emission rate.* Calculate the organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids used, using Equation 3 of this section.

$$H_{yr} = \frac{\sum_{y=1}^{12} H_e}{\sum_{y=1}^{12} V_{st}} \qquad \text{(Eq. 3)}$$

Where:

H_{yr} = Organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids.

H_e = Total mass of organic HAP emissions, kg, from all materials used during month, y, as calculated by Equation 1 of this section.

V_{st} = Total volume of coating solids, liters, used during month, y, as calculated by Equation 2 of this section.

y = Identifier for months.

(h) *Compliance demonstration.* The organic HAP emission rate for the initial 12-month compliance period, H_{yr}, must be less than or equal to the applicable emission limit in § 63.3490. You must keep all records as required by §§ 63.3512 and 63.3513. As part of the Notification of Compliance Status required by § 63.3510, you must identify the coating operation(s) for which you used the emission rate without add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3490, determined according to this section.

(i) *Alternative calculation of overall subcategory emission limit (OSEL).* Alternatively, if your affected source applies coatings in more than one coating type segment within a subcategory, you may calculate an overall HAP emission limit for the subcategory using Equation 4 of this section. If you use this approach, you must limit organic HAP emissions to the atmosphere to the OSEL specified by Equation 4 of this section during each 12-month compliance period.

$$OSEL = \frac{\sum_{i=1}^{n} L_i\left(V_i\right)}{\sum_{i=1}^{n} V_i} \qquad \text{(Eq. 4)}$$

Where:

OSEL = Total allowable organic HAP in kg HAP/liter coating solids (pound (lb) HAP/gal solids) that can be emitted to the atmosphere from all coating type segments in the subcategory.

L_i = HAP emission limit for coating type segment i from Table 1 for a new or reconstructed source or Table 2 for an existing source, kg HAP/liter coating solids (lb HAP/gal solids).

V_i = Total volume of coating solids in liters (gal) for all coatings in coating type segment i used during the 12-month compliance period.

n = Number of coating type segments within one subcategory being used at the affected source.

You must use the OSEL determined by Equation 4 of this section throughout the 12-month compliance period and may not switch between compliance with individual coating type limits and an OSEL. You may not include coatings in different subcategories in determining your OSEL by this approach. You must keep all records as required by §§ 63.3512 and 63.3513. As part of the Notification of Compliance Status required by § 63.3510, you must identify the subcategory for which you used a calculated OSEL and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate for the subcategory

was less than or equal to the OSEL determined according to this section.

§ 63.3532 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the organic HAP emission rate for each compliance period, determined according to § 63.3531(a) through (g), must be less than or equal to the applicable emission limit in § 63.3490. Alternatively, if you calculate an OSEL for all coating type segments within a subcategory according to § 63.3531(i), the organic HAP emission rate for the subcategory for each compliance period must be less than or equal to the calculated OSEL. You must use the calculated OSEL throughout each compliance period. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3530 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.3531(a) through (g) on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.3490 or the OSEL calculated according to § 63.3531(i), this is a deviation from the emission limitations for that compliance period and must be reported as specified in §§ 63.3510(c)(6) and 63.3511(a)(6).

(c) As part of each semiannual compliance report required by § 63.3511, you must identify the coating operation(s) for which you used the emission rate without add-on controls option. If there were no deviations from the emission limitations, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3490 determined according to § 63.3531(a) through (g), or using the OSEL calculated according to § 63.3531(i).

(d) You must maintain records as specified in §§ 63.3512 and 63.3513.

Compliance Requirements for the Emission Rate With Add-On Controls Option

§ 63.3540 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3541(i), you must conduct a performance test of each capture system and add-on control device according to §§ 63.3543, 63.3544, and 63.3545 and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3541(i), you must initiate the first material balance no later than the applicable compliance date specified in § 63.3483.

(2) You must develop and begin implementing the work practice plan required by § 63.3493 no later than the compliance date specified in § 63.3483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3541. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3543, 63.3544, and 63.3545; results of liquid-liquid material balances conducted according to § 63.3541(i); calculations according to § 63.3541 and supporting documentation showing that, during the initial compliance period, the organic HAP emission rate was equal to or less than the emission limit in § 63.3490(a); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3547; and documentation of whether you developed and implemented the work practice plan required by § 63.3493.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3492 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section. The requirements in this paragraph (a)(4) do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.3541(i).

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3541(i), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.3543, 63.3544, and 63.3545 and establish the operating limits required by § 63.3492 no later than the compliance date specified in § 63.3483. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3541(i), you must initiate the first material balance no later than the compliance date specified in § 63.3483.

(2) You must develop and begin implementing the work practice plan required by § 63.3493 no later than the compliance date specified in § 63.3483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3541. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests

conducted according to §§ 63.3543, 63.3544, and 63.3545; results of liquid-liquid material balances conducted according to § 63.3541(i); calculations according to § 63.3541 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the emission limit in § 63.3490(b); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3547; and documentation of whether you developed and implemented the work practice plan required by § 63.3493.

§ 63.3541 How do I demonstrate initial compliance?

(a) You may use the emission rate with add-on controls option for any coating operation, for any group of coating operations within a subcategory or coating type segment, or for all of the coating operations within a subcategory or coating type segment. You may include both controlled and uncontrolled coating operations in a group for which you use this option. You must use either the compliant material option, the emission rate without add-on controls option, or the control efficiency/outlet concentration option for any coating operation in the affected source for which you do not use the emission rate with add-on controls option. To demonstrate initial compliance, the coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable emission limitations in § 63.3490. You must conduct a separate initial compliance demonstration for each one and two-piece draw and iron can body coating, sheetcoating, three-piece can body assembly coating, and end coating affected source. You must meet all the requirements of this section to demonstrate initial compliance with the emission limitations. When calculating the organic HAP emission rate according to this section, do not include any coatings or thinners used on coating operations for which you use the compliant material option, the emission rate without add-on controls option, or the control efficiency/outlet concentration option. You do not need to redetermine the mass of organic HAP in coatings or thinners that have been reclaimed onsite and reused in the coating operation(s) for which you use the emission rate with add-on controls option.

(b) *Compliance with operating limits.* Except as provided in § 63.3540(a)(4) and except for solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of § 63.3541(i), you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3492 using the procedures specified in §§ 63.3546 and 63.3547.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.3493 during the initial compliance period, as specified in § 63.3512.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (n) of this section to demonstrate compliance with the applicable emission limit in § 63.3490.

(e) *Determine the mass fraction of organic HAP, density, volume used, and volume fraction of coating solids.* Follow the procedures specified in § 63.3531(a) through (d) to determine the mass fraction of organic HAP, density, and volume of each coating and thinner used during each month and the volume fraction of coating solids for each coating used during each month.

(f) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.3531, calculate the total mass of organic HAP emissions before add-on controls from all coatings and thinners used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option.

(g) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during each month. The emission reduction determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (h) of this section to calculate the mass of organic HAP emission reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (j) of this section to calculate the organic HAP emission reduction.

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances.* For each controlled coating operation using an emission capture system and add-on control device, other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction, using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation served by the emission capture system and add-on control device during each month. For any period of time a deviation specified in § 63.3542(c) or (d) occurs in the controlled coating operation, including a deviation during a period of SSM, you must assume zero efficiency for the emission capture system and add-on control device, unless you have other data indicating the actual efficiency of the emission capture system and add-on control device, and the use of these data has been approved by the Administrator. Equation 1 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation.

$$H_c = \left(A_c + B_c - H_{unc}\right)\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \qquad \text{(Eq. 1)}$$

Where:

H_c = Mass of organic HAP emission reduction for the controlled coating operation during the month, kg.

A_c = Total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg, as calculated in Equation 1A of this section.

B_c = Total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg, as calculated in Equation 1B of this section.

H_{unc} = Total mass of organic HAP in the coatings, thinners, and cleaning materials used during all deviations specified in § 63.3542(c) and (d) that occurred during the month in the controlled coating operation, kg, as calculated in Equation 1D of this section.

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.3543 and 63.3544 to measure and record capture efficiency.

DRE = Organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.3543 and 63.3545 to measure and record the organic HAP destruction or removal efficiency.

(1) Calculate the mass of organic HAP in the coatings used in the controlled coating operation, kg, using Equation 1A of this section.

$$A_c = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A_c = Total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg.

$Vol_{c,i}$ = Total volume of coating, i, used during the month, liters.

$D_{c,i}$ = Density of coating, i, kg per liter.

$W_{c,i}$ = Mass fraction of organic HAP in coating, i, kg per kg.

m = Number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners used in the controlled coating operation, kg, using Equation 1B of this section.

$$B_c = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B_c = Total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg.

$Vol_{t,j}$ = Total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = Density of thinner, j, kg per liter thinner.

$W_{t,j}$ = Mass fraction of organic HAP in thinner, j, kg organic HAP per kg thinner.

n = Number of different thinners used.

(3) Calculate the mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg, using Equation 1C of this section.

$$C_c = \sum_{k=1}^{p} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 1C)}$$

Where:

C_c = Total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg.

$Vol_{s,k}$ = Total volume of cleaning material, k, used during the month, liters.

$D_{s,k}$ = Density of cleaning material, k, kg per liter.

$W_{s,k}$ = Mass fraction of organic HAP in cleaning material, k, kg per kg.

p = Number of different cleaning materials used.

(4) Calculate the mass of organic HAP in the coatings, thinners, and cleaning materials used in the controlled coating operation during deviations specified in § 63.3542(c) and (d), using Equation 1D of this section.

$$H_{unc} = \sum_{h=1}^{q} \left(Vol_{h}\right)\left(D_{h}\right)\left(W_{h}\right) \qquad \text{(Eq. 1D)}$$

Where:

H_{unc} = Total mass of organic HAP in the coatings, thinners, and cleaning materials used during all deviations specified in § 63.3542(c) and (d) that occurred during the month in the controlled coating operation, kg.

Vol_h = Total volume of coating, thinner, or cleaning material, h, used in the controlled coating operation during deviations, liters.

D_h = Density of coating, thinner, or cleaning material, h, kg per liter.

W_h = Mass fraction of organic HAP in coating, thinner, or cleaning material, h, kg organic HAP per kg coating.

q = Number of different coatings, thinners, or cleaning materials.

(i) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings and thinners that are used in the coating operation controlled by the solvent recovery system during each month. Perform a liquid-liquid material balance for each

month as specified in paragraphs (i)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (i)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each month.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the month, kg, based on measurement with the device required in paragraph (i)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will take precedence unless, after consultation, a regulated source can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(4) Determine the density of each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg per liter, according to § 63.3531(c).

(5) Measure the volume of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, liters.

(6) Each month, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency, using Equation 2 of this section.

$$R_V = 100\frac{M_{VR}}{\sum_{i=1}^{m}\left(Vol_i\right)\left(D_i\right)\left(WV_{c,i}\right)+\sum_{j=1}^{n}\left(Vol_j\right)\left(D_j\right)\left(WV_{t,j}\right)} \qquad \text{(Eq. 2)}$$

Where:

R_V = Volatile organic matter collection and recovery efficiency of the solvent recovery system during the month, percent.

M_{VR} = Mass of volatile organic matter recovered by the solvent recovery system during the month, kg.

Vol_i = Volume of coating, i, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_i = Density of coating, i, kg per liter.

$WV_{c,i}$ = Mass fraction of volatile organic matter for coating, i, kg volatile organic matter per kg coating.

Vol_j = Volume of thinner, j, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_j = Density of thinner, j, kg per liter.

$WV_{t,j}$ = Mass fraction of volatile organic matter for thinner, j, kg volatile organic matter per kg thinner.

m = Number of different coatings used in the coating operation controlled by the solvent recovery system during the month.

n = Number of different thinners used in the coating operation controlled by the solvent recovery system during the month.

(7) Calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month using Equation 3 of this section.

$$H_{CSR} = \left(A_{CSR} + B_{CSR}\right)\left(\frac{R_V}{100}\right) \qquad \text{(Eq. 3)}$$

Where:

H_{CSR} = Mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the month, kg.

A_{CSR} = Total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3A of this section.

B_{CSR} = Total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3B of this section.

R_V = Volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 2 of this section.

(i) Calculate the mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, using Equation 3A of this section.

$$A_{CSR} = \sum_{i=1}^{m}\left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 3A)}$$

Where:

A_{CSR} = Total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{c,i}$ = Total volume of coating, i, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{c,i}$ = Density of coating, i, kg per liter.

$W_{c,i}$ = Mass fraction of organic HAP in coating, i, kg per kg.

m = Number of different coatings used.

(ii) Calculate the mass of organic HAP in the thinners used in the coating operation controlled by the solvent

recovery system using Equation 3B of this section.

$$B_{CSR} = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 3B)}$$

Where:

B_{CSR} = Total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{t,j}$ = Total volume of thinner, j, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{t,j}$ = Density of thinner, j, kg per liter.

$W_{t,j}$ = Mass fraction of organic HAP in thinner, j, kg per kg.

n = Number of different thinners used.

(j) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used, which is the combined volume of coating solids for all the coatings used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option, using Equation 2 of § 63.3531.

(k) *Calculate the mass of organic HAP emissions for each month.* Determine the mass of organic HAP emissions during each month using Equation 4 of this section.

$$H_{HAP} = H_e - \sum_{i=1}^{q}\left(H_{c,i}\right) - \sum_{j=1}^{r}\left(H_{CSR,j}\right) \qquad \text{(Eq. 4)}$$

Where:

H_{HAP} = Total mass of organic HAP emissions for the month, kg.

H_e = Total mass of organic HAP emissions before add-on controls from all the coatings and thinners used during the month, kg, determined according to paragraph (f) of this section.

$H_{C,i}$ = Total mass of organic HAP emission reduction for controlled coating operation, i, not using a liquid-liquid material balance, during the month, kg, from Equation 1 of this section.

$H_{CSR,j}$ = Total mass of organic HAP emission reduction for coating operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the month, kg, from Equation 3 of this section.

q = Number of controlled coating operations not using a liquid-liquid material balance.

r = Number of coating operations controlled by a solvent recovery system using a liquid-liquid material balance.

(l) *Calculate the organic HAP emission rate for the 12-month compliance period.* Determine the organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids used, using Equation 5 of this section.

$$H_{annual} = \frac{\sum_{y=1}^{12} H_{HAP,y}}{\sum_{y=1}^{12} V_{st,y}} \qquad \text{(Eq. 5)}$$

Where:

H_{annual} = Organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids.

$H_{HAP,y}$ = Organic HAP emission rate for month, y, determined according to Equation 4 of this section.

$V_{st,y}$ = Total volume of coating solids used during month, y, liters, from Equation 2 of § 63.3531.

y = Identifier for months.

(m) *Compliance demonstration.* To demonstrate initial compliance with the emission limit, the organic HAP emission rate, calculated using Equation 5 of this section, must be less than or equal to the applicable emission limit in § 63.3490. You must keep all records as required by §§ 63.3512 and 63.3513. As part of the Notification of Compliance Status required by § 63.3510, you must identify the coating operation(s) for which you used the emission rate with add-on controls option and submit a statement that the coating operation(s) was in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3490, and you achieved the operating limits required by § 63.3492 and the work practice standards required by § 63.3493.

(n) *Alternative calculation of overall subcategory emission limit.* Alternatively, if your affected source applies coatings in more than one coating type segment within a subcategory, you may calculate an overall HAP emission limit for the subcategory using Equation 4 of § 63.3531. If you use this approach, you must limit organic HAP emissions to the atmosphere to the OSEL specified by Equation 4 of § 63.3531 during each 12-month compliance period. You must use the OSEL determined by Equation 4 of § 63.3531 throughout the 12-month compliance period and may not switch between compliance with individual coating type limits and an OSEL. If you follow this approach, you may not include coatings in different subcategories in determining your OSEL. You must keep all records as required by §§ 63.3512 and 63.3513. As part of the Notification of Compliance Status required by § 63.3510, you must identify the subcategory for which you used a calculated OSEL and submit a statement that the coating operation(s) was in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate for the subcategory was less than or equal to the OSEL determined according to this section.

§ 63.3542 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.3490, the organic HAP emission rate for each compliance period, determined according to the procedures in § 63.3541, must be equal to or less than the applicable emission

limit in § 63.3490. Alternatively, if you calculate an OSEL for all coating type segments within a subcategory according to § 63.3531(i), the organic HAP emission rate for the subcategory for each compliance period must be less than or equal to the calculated OSEL. You must use the calculated OSEL throughout each compliance period. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3540 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.3541 on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.3490, that is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.3510(b)(6) and 63.3511(a)(7).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.3492 that applies to you as specified in Table 4 to this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 4 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.3510(b)(6) and 63.3511(a)(7).

(2) If an operating parameter deviates from the operating limit specified in Table 4 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation, unless you have other data indicating the actual efficiency of the emission capture system and add-on control device, and the use of these data has been approved by the Administrator. For the purposes of completing the compliance calculations specified in § 63.3541(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.3541.

(d) You must meet the requirements for bypass lines in § 63.3547(b) for controlled coating operations for which you do not conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in §§ 63.3510(b)(6) and 63.3511(a)(7). For the purposes of completing the compliance calculations specified in § 63.3541(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.3541.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.3493. If you did not develop a work practice plan or you did not implement the plan or you did not keep the records required by § 63.3512(j)(8), that is a deviation from the work practice standards that must be reported as specified in §§ 63.3510(b)(6) and 63.3511(a)(7).

(f) As part of each semiannual compliance report required in § 63.3511, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limitations, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3490, and you achieved the operating limits required by § 63.3492 and the work practice standards required by § 63.3493 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the SSMP required by § 63.3500(c).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e).

(i) You must maintain records as specified in §§ 63.3512 and 63.3513.

§ 63.3543 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.3540 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 coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction 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 § 63.3544. You must conduct each performance test of an add-on control device according to the requirements in § 63.3545.

§ 63.3544 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 § 63.3540.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the 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 PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings and thinners used in the coating operation are applied within the capture system, and coating solvent flash-off, curing, and drying occurs within the capture system. For example, the criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the three protocols described in

paragraphs (c), (d), and (e) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours 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 part to go from the beginning to the end of production, which includes surface preparation activities and drying or curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation to the mass of TVH emissions not captured by the emission capture system. Use a TTE or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings and thinners are applied and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a TTE or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or 204F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating and thinner used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings and thinners used in the coating operation during each capture efficiency test run.

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \qquad \text{(Eq. 1)}$$

Where:

TVH_{used} = Total mass of liquid TVH in materials used in the coating operation during the capture efficiency test run, kg.

TVH_i = Mass fraction of TVH in coating or thinner, i, that is used in the coating operation during the capture efficiency test run, kg TVH per kg material.

Vol_i = Total volume of coating or thinner, i, used in the coating operation during the capture efficiency test run, liters.

D_i = Density of coating or thinner, i, kg material per liter material.

n = Number of different coatings and thinners used in the coating operation during the capture efficiency test run.

(4) 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 TTE 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 TTE.

(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 coating operation for which capture efficiency is being determined must be shut down but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 2 of this section.

$$CE = \frac{(TVH_{used} - TVH_{uncaptured})}{TVH_{used}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = Total mass of liquid TVH used in the coating operation during the capture efficiency test run, kg.

$TVH_{uncaptured}$ = Total mass of TVH that is not captured by the emission capture system and that exits from the TTE or building enclosure during the capture efficiency test run, kg, determined according to paragraph (c)(4) of this section.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *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 TTE or a building enclosure and the procedures in paragraphs (d)(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 coating operation where coatings and thinners are applied and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device, such as the entrance and exit areas of an oven or a spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a TTE 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 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 TTE 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 TTE.

(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 coating 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 3 of this section.

$$CE = \frac{TVH_{captured}}{\left(TVH_{captured} + TVH_{uncaptured}\right)} \times 100 \qquad \text{(Eq. 3)}$$

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 (d)(2) of this section.

$TVH_{uncaptured}$ = Total mass of TVH that is not captured by the emission capture system and that exits from the TTE or building enclosure during the capture efficiency test run, kg, determined according to paragraph (d)(3) of this section.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Alternative capture efficiency protocol.* As an alternative to the procedures specified in paragraphs (c) and (d) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

§ 63.3545 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 § 63.3540. 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. You may also use as an alternative to Method 3B the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]'' (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 (5) 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 ppm 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.

(3) Use Method 25A of appendix A to 40 CFR part 60 if the add-control device is not an oxidizer.

(4) You may use Method 18 of appendix A to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

(5) 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, may be used.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet for the low-volume concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high-volume dilute stream outlet of the concentrator.

(d) 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 per hour (kg/h).

C_c = Concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, ppmvd.

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)).

Note: If M_f is calculated in English units (lb/h), the conversion factor for molar volume is 0.00256 lb-moles per cubic foot (mol/ft^3).

(e) 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.

(f) 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.

§ 63.3546 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 § 63.3540 and described in §§ 63.3543, 63.3544, and 63.3545, you must establish the operating limits required by § 63.3492 unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3492.

(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. That 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 at the inlet to 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 at the inlet to the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. The average temperature difference is the minimum operating limit 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 at the inlet to 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 at the inlet to the catalyst bed during the performance test. That 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 recommendations and conduct a new performance test to determine destruction efficiency according to § 63.3545.

(c) *Regenerative oxidizers.* If your add-on control device is a regenerative oxidizer, establish operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must establish all applicable operating limits according to paragraphs (a) and (b) of this section.

(2) You must submit a valve inspection plan that documents the steps taken to minimize the amount of leakage during the regenerative process. This plan can include, but is not limited to, routine inspection of key parameters of the valve operating system (*e.g.*, solenoid valve operation, air pressure, hydraulic pressure); visual inspection of the valves during internal inspections; and/or actual testing of the emission stream for leakage.

(d) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle, and the maximum carbon bed temperature recorded after the cooling cycle.

(e) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (e)(1) and (2) of this section.

(1) During the performance test, monitor and record the condenser outlet (product side) gas temperature 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 condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(f) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (f)(1) through (7) of this section.

(1) During the performance test, monitor and record the inlet temperature to the desorption/reactivation zone of the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption/reactivation zone inlet temperature.

(3) During the performance test, monitor and record an indicator(s) of performance for the desorption/reactivation fan operation at least once every 15 minutes during each of the three runs of the performance test. The indicator can be speed in revolutions per minute (rpm), power in amps, static pressure, or flow rate.

(4) Establish a suitable range for the parameter(s) selected based on the system design specifications, historical data, and/or data obtained concurrent with an emissions performance test. This is the operation limit range for the desorption/reactivation fan operation.

(5) During the performance test, monitor the rotational speed of the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(6) Use the data collected during the performance test to calculate and record the average rotational speed. This is the minimum operating limit for the rotational speed of the concentrator. However, the indicator range for the rotational speed may be changed if an engineering evaluation is conducted and a determination made that the change in speed will not affect compliance with the emission limit.

(7) Develop and implement an inspection and maintenance plan for the concentrator(s) that you elect to monitor according to paragraph (f) of this section. The plan must include, at a minimum, annual sampling and analysis of the absorbent material (*i.e.*, adsorbent activity) following the manufacturer's recommended procedures.

(g) *Emission capture systems.* For each capture device that is not part of a PTE that meets the criteria of § 63.3544(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (g)(1) and (2) of this section. The operating limit for a PTE is specified in Table 4 to this subpart.

(1) During the capture efficiency determination required by § 63.3540 and described in §§ 63.3543 and 63.3544, 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.

§ 63.3547 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) 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 a controlled coating operation 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 paragraph (b)(1) or (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) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. The flow indicator shall be installed at the entrance to any bypass line.

(2) Secure the bypass line valve in the nondiverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure the valve is maintained in the nondiverting position and the vent stream is not diverted through the bypass line.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), 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, install a gas temperature monitor according to paragraph (c)(2)(i) or (ii) of this section.

(i) If you establish operating limits according to § 63.3546(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 at the inlet to and the outlet of the catalyst bed to measure the temperature difference across the bed.

(ii) If you establish operating limits according to § 63.3546(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 at the inlet to 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 (ii) 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 minimum accuracy of ±1.2 degrees Celsius or ±1 percent of the temperature value in degrees Celsius, whichever is larger.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having an accuracy of ±10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a minimum accuracy of ±1.2 degrees Celsius or ±1 percent of the temperature value in degrees Celsius, whichever is larger, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a minimum accuracy of ±1 percent of the temperature recorded in degrees Celsius or ±1.2 degrees Celsius, whichever is greater.

(2) The temperature monitor must provide a continuous gas temperature record.

(f) *Concentrators.* If you are using a concentrator such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) through (4) of this section.

(1) You must install a temperature monitor at the inlet to the desorption/reactivation zone of the concentrator. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must select an indicator(s) of performance of the desorption/reactivation fan operation, such as speed, power, static pressure, or flow rate.

(3) You must monitor the rotational speed of the concentrator in revolutions per hour.

(4) You must verify the performance of the adsorbent material by examining representative samples and testing adsorbent activity per the manufacturer's recommendations.

Compliance Requirements for the Control Efficiency/Outlet Concentration Option

§ 63.3550 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483. You must conduct a performance test of each capture system and add-on control device according to §§ 63.3553, 63.3554, and 63.3555 and establish the operating limits required by § 63.3492 no later than 180 days after the applicable compliance date specified in § 63.3483.

(2) You must develop and begin implementing the work practice plan required by § 63.3493 no later than the compliance date specified in § 63.3483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3551. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to § 63.3553, 63.3554, and 63.3555; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3557; and documentation of whether you developed and implemented the work practice plan required by § 63.3493.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3492 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits on the date you complete the performance tests specified in paragraph (a)(1) of this section.

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3483.

(2) You must develop and begin implementing the work practice plan required by § 63.3493 no later than the compliance date specified in § 63.3483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3551. The initial compliance period begins on the applicable compliance date specified in § 63.3483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3553, 63.3554, and 63.3555; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3557; and

documentation of whether you developed and implemented the work practice plan required by § 63.3493.

§ 63.3551 How do I demonstrate initial compliance?

(a) You may use the control efficiency/outlet concentration option for any coating operation, for any group of coating operations within a subcategory or coating type segment, or for all of the coating operations within a subcategory or coating type segment. You must use the compliant material option, the emission rate without add-on controls option, or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use the control efficiency/outlet concentration option. To demonstrate initial compliance, the coating operation(s) for which you use the control efficiency/outlet concentration option must meet the applicable levels of emission reduction in § 63.3490. You must conduct a separate initial compliance demonstration for each one and two-piece draw and iron can body coating, sheetcoating, three-piece can body assembly coating, and end coating affected source. You must meet all the requirements of this section to demonstrate initial compliance with the emission limitations. When calculating the organic HAP emission rate according to this section, do not include any coatings or thinners used on coating operations for which you use the compliant material option, the emission rate without add-on controls option, or the emission rate with add-on controls option. You do not need to redetermine the mass of organic HAP in coatings or thinners that have been reclaimed onsite and reused in the coating operation(s) for which you use the emission rate with add-on controls option.

(b) *Compliance with operating limits.* You must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3492, using the procedures specified in §§ 63.3556 and 63.3557.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.3493 during the initial compliance period as specified in § 63.3512.

(d) *Compliance demonstration.* To demonstrate initial compliance, the coating operation(s) for which you use the control efficiency/outlet concentration option must meet the applicable levels of emission reduction in § 63.3490. You must keep all records applicable to the control efficiency/outlet concentration option as required by §§ 63.3512 and 63.3513. As part of the Notification of Compliance Status required by § 63.3510, you must identify the coating operation(s) for which you used the control efficiency/outlet concentration option and submit a statement that the coating operation(s) was in compliance with the emission limitations during the initial compliance period because you achieved the operating limits required by § 63.3492 and the work practice standards required by § 63.3493.

§ 63.3552 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the emission limitations using the control efficiency/outlet concentration option, the organic HAP emission rate for each compliance period must be equal to or less than 20 ppmvd or must be reduced by the amounts specified in § 63.3490. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3550 is the end of a compliance period consisting of that month and the preceding 11 months.

(b) You must demonstrate continuous compliance with each operating limit required by § 63.3492 that applies to you, as specified in Table 4 to this subpart. If an operating parameter is out of the allowed range specified in Table 4 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.3510(b)(6) and 63.3511(a)(7).

(c) You must meet the requirements for bypass lines in § 63.3557(b). If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in §§ 63.3510(b)(6) and 63.3511(a)(7). For purposes of demonstrating compliance, you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation.

(d) You must demonstrate continuous compliance with the work practice standards in § 63.3493. If you did not develop a work practice plan or you did not implement the plan or you did not keep the records required by § 63.3512(j)(8), this is a deviation from the work practice standards that must be reported as specified in §§ 63.3510(b)(6) and 63.3511(a)(7).

(e) As part of each semiannual compliance report required in § 63.3511, you must identify the coating operation(s) for which you used the control efficiency/outlet concentration option. If there were no deviations from the operating limits or work practice standards, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than 20 ppmvd or was reduced by the amount specified in § 63.3490, and you achieved the operating limits required by § 63.3492 and the work practice standards required by § 63.3493 during each compliance period.

(f) During periods of startup, shutdown, or malfunctions of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the SSMP required by § 63.3500(c).

(g) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(h) You must maintain records applicable to the control efficiency/outlet concentration option as specified in §§ 63.3512 and 63.3513.

§ 63.3553 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.3550 according to the requirements of § 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 coating operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation(s). Operations during periods of startup, shutdown, or malfunction 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 § 63.3554. You must conduct each performance test of an add-on control device according to the requirements in § 63.3555.

§ 63.3554 How do I determine the emission capture system efficiency?

The capture efficiency of your emission capture system must be 100 percent to use the control efficiency/outlet concentration option. You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a) and (b) of this section are met.

(a) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(b) All coatings and thinners used in the coating operation are applied within the capture system, and coating solvent flash-off, curing, and drying occurs within the capture system. This criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

§ 63.3555 How do I determine the outlet THC emissions and add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine either the outlet THC emissions or add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3550. 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. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]'' (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 ppm 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.

(3) Use Method 25A of appendix A to 40 CFR part 60 if the add-on control device is not an oxidizer.

(4) You may use Method 18 of appendix A to 40 CFR part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

(5) 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 may be used.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume dilute stream that has been treated by the concentrator and a second add-on control device is an oxidizer with an outlet for the low-volume, concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high-volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and 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/h.

C_c = The concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, ppmvd.

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)).

Note: If M_f is calculated in English units (lb/h), the conversion factor for molar volume is 0.00256 lb-moles per cubic foot (mol/ft^3).

(e) 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.

(f) 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.

§ 63.3556 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 § 63.3550 and described in §§ 63.3553, 63.3554, and 63.3555, you must establish the operating limits required by § 63.3492 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3492.

(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. That 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 at the inlet to 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 at the inlet to the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. The average temperature difference is the minimum operating limit 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 at the inlet to 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 at the inlet to the catalyst bed during the performance test. That 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 recommendations and conduct a new performance test to determine destruction efficiency according to § 63.3555.

(c) *Regenerative oxidizers.* If your add-on control device is a regenerative oxidizer, establish operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must establish all applicable operating limits according to paragraphs (a) and (b) of this section.

(2) You must submit a valve inspection plan that documents the steps taken to minimize the amount of leakage during the regenerative process. This plan can include, but is not limited to, routine inspection of key parameters of the valve operating system (*e.g.*, solenoid valve operation, air pressure, hydraulic pressure), visual inspection of the valves during internal inspections, and/or actual testing of the emission stream for leakage.

(d) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle and the maximum carbon bed temperature recorded after the cooling cycle.

(e) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (e)(1) and (2) of this section.

(1) During the performance test, monitor and record the condenser outlet (product side) gas temperature 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 condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(f) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (f)(1) through (7) of this section.

(1) During the performance test, monitor and record the inlet temperature to the desorption/reactivation zone of the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption/reactivation zone inlet temperature.

(3) During the performance test, monitor and record an indicator(s) of performance for the desorption/reactivation fan operation at least once every 15 minutes during each of the three runs of the performance test. The indicator can be speed in rpm, power in amps, static pressure, or flow rate.

(4) Establish a suitable range for the parameter(s) selected based on the system design specifications, historical data, and/or data obtained concurrent with an emissions performance test. This is the operation limit range for the desorption/reactivation fan operation.

(5) During the performance test, monitor the rotational speed of the

concentrator at least once every 15 minutes during each of the three runs of the performance test.

(6) Use the data collected during the performance test to calculate and record the average rotational speed. This is the minimum operating limit for the rotational speed of the concentrator. However, the indicator range for the rotational speed may be changed if an engineering evaluation is conducted and a determination made that the change in speed will not affect compliance with the emission limit.

(7) Develop and implement an inspection and maintenance plan for the concentrator(s) that you elect to monitor according to paragraph (f) of this section. The plan must include, at a minimum, annual sampling and analysis of the absorbent material (*i.e.*, adsorbent activity) following the manufacturer's recommended procedures.

(g) *Emission capture systems.* For each capture device that is part of a PTE that meets the criteria of § 63.3554, the operating limit for a PTE is specified in Table 4 to this subpart.

§ 63.3557 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) 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 a controlled coating operation 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 paragraph (b)(1) or (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) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. The flow indicator shall be installed at the entrance to any bypass line.

(2) Secure the bypass line valve in the nondiverting position with a car-seal or lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure the valve is maintained in the nondiverting position, and the vent stream is not diverted through the bypass line.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), 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, install a gas temperature monitor according to paragraph (c)(2)(i) or (ii) of this section.

(i) If you establish operating limits according to § 63.3556(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 at the inlet to and the outlet of the catalyst bed to measure the temperature difference across the bed.

(ii) If you establish operating limits according to § 63.3556(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 at the inlet to 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 (ii) 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 minimum accuracy of ±1.2 degrees Celsius or ±1 percent of the temperature value in degrees Celsius, whichever is larger.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having an accuracy of ±10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a minimum accuracy of ±1.2 degrees Celsius or ±1 percent of the temperature value in degrees Celsius, whichever is larger, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a minimum accuracy of ±1.2 degrees Celsius or ±1 percent of the temperature value in degrees Celsius, whichever is larger.

(2) The temperature monitor must provide a continuous gas temperature record.

(f) *Concentrators.* If you are using a concentrator such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) through (4) of this section.

(1) You must install a temperature monitor at the inlet to the desorption/reactivation zone of the concentrator. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must select an indicator(s) of performance of the desorption/reactivation fan operation, such as speed, power, static pressure, or flow rate.

(3) You must monitor the rotational speed of the concentrator in revolutions per hour.

(4) You must verify the performance of the adsorbent material by examining representative samples and testing adsorbent activity per the manufacturer's recommendations.

Other Requirements and Information

§ 63.3560 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the EPA, has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the work practice standards in § 63.3493.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.3561 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 as follows:

Add-on control means an air pollution control device, such as a thermal oxidizer or carbon adsorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Adhesive means any chemical substance that is applied for the purpose of bonding two surfaces together.

Aerosol can means any can into which a pressurized aerosol product is packaged.

Aseptic coating means any coating that must withstand high temperature steam, chemicals, or a combination of both used to sterilize food cans prior to filling.

Can body means a formed metal can, excluding the unattached end(s).

Can end means a can part manufactured from metal substrate equal to or thinner than 0.3785 millimeters (mm) (0.0149 inch) for the purpose of sealing the ends of can bodies including nonmetal or composite can bodies.

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.

Capture efficiency or *capture system efficiency* means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings or cleaning materials, both at the point of application and at subsequent points where emissions from the coatings or cleaning materials occur, such as flash-off, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

Cleaning material means a solvent used to remove contaminants and other materials such as dirt, grease, oil, and dried or wet coating (*e.g.*, depainting) from a substrate before or after coating application or from equipment associated with a coating operation, such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, and maskants. Fusion pastes, ink jet markings, mist solutions, and lubricants, as well as decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances, are not considered coatings for the purposes of this subpart.

Coating operation means equipment used to apply coating to a metal can or end (including decorative tins), or metal crown or closure, and to dry or cure the coating after application. A coating operation always includes at least the point at which a coating is applied and all subsequent points in the affected source where organic HAP emissions from that coating occur. There may be multiple coating operations in an affected source. Coating application with hand-held nonrefillable aerosol containers, touch-up markers, or marking pens is not a coating operation for the purposes of this subpart.

Coating solids means the nonvolatile portion of a coating that makes up the dry film.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart; used to sample, condition (if applicable), analyze, and provide a record of coating operation, capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

Crowns and closures means steel or aluminum coverings such as bottle caps and jar lids for containers other than can ends.

Decorative tin means a single-walled container, designed to be covered or uncovered that is manufactured from metal substrate equal to or thinner than 0.3785 mm (0.0149 inch) and is normally coated on the exterior surface with decorative coatings. Decorative tins may contain foods but are not hermetically sealed and are not subject to food processing steps such as retort or pasteurization. Interior coatings are not usually applied to protect the metal and contents from chemical interaction.

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 limit, operating limit, or work practice standard;

(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 limit, operating limit, or work practice

standard in this subpart during startup, shutdown, or malfunction regardless of whether or not such failure is permitted by this subpart.

Drum means a cylindrical metal container with walls of 29 gauge or thicker and a capacity greater than 45.4 liters (12 gal).

Emission limitation means an emission limit, operating limit, or work practice standard.

Enclosure means a structure that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

End coating means the application of end seal compound or repair spray on can ends during manufacturing.

End seal compound means the coating applied onto ends of cans that functions to seal the end(s) of a can to the can body.

Exempt compound means a specific compound that is not considered a VOC due to negligible photochemical reactivity. The exempt compounds are listed in 40 CFR 51.100(s).

Food can means any can manufactured to contain edible products and designed to be hermetically sealed. Does not include decorative tins.

Fusion paste means a material used to attach nozzles and other miscellaneous parts to general line cans.

General line can means any can manufactured to contain inedible products. Does not include aerosol cans or decorative tins.

Ink jet marking means the ink and makeup fluid used for date code and other identification markings on a can for the marking on a can indicating when food in a can has completed the retort process.

Inside spray means a coating sprayed on the interior of a can body to provide a protective film between the can and its contents.

Lubricant means an organic liquid used as a lubricating agent to facilitate the handling and fabrication (*e.g.*, tab making, stamping, or necking) of can bodies or ends.

Manufacturer's formulation data means data on a material (such as a coating) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in § 63.3521. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as kg of organic HAP per kg of material.

Metal can means a single-walled container manufactured from metal substrate equal to or thinner than 0.3785 mm (0.0149 inch).

Mist solution means a hydrocarbon or aqueous solution used as an application aid with solvent-based or waterborne end seal compounds to prevent compound accumulation on the lining nozzle.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Nonaseptic coating means any coating that is not subjected to high temperature steam, chemicals, or a combination of both to sterilize food cans prior to filling.

One and two-piece draw and iron can means a steel or aluminum can manufactured by the draw and iron process. Includes two-piece beverage cans, two-piece food cans, and one-piece aerosol cans.

One-piece aerosol can means an aerosol can formed by the draw and iron process to which no ends are attached and a valve is placed directly on top.

Organic HAP content means the mass of organic HAP per volume of coating solids for a coating, calculated using Equation 1 of § 63.3521. The organic HAP content is determined for the coating in the condition it is in when received from its manufacturer or supplier and does not account for any alteration after receipt.

Pail means a cylindrical or rectangular metal container with walls of 29 gauge or thicker and a capacity of 7.6 to 45.4 liters (2 to 12 gal) (for example, bucket).

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51, for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Protective oil means an organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Repair spray means a spray coating for post-formed easy-open ends to provide additional protection in the scored areas by covering breaks at the score location or to provide an additional layer of protective coating on the interior of the end for corrosion resistance.

Research or laboratory equipment means any equipment that is being used to conduct research and development of new processes and products, when such equipment is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Sheetcoating means a can manufacturing coating process that involves coating of flat metal sheets before they are formed into cans.

Side seam stripe means a coating applied to the interior and/or exterior of the welded or soldered seam of a three-piece can body to protect the exposed metal.

Startup, initial means the first time equipment is brought online in a facility.

Surface preparation means use of a cleaning material on a portion of or all of a substrate. That includes use of a cleaning material to remove dried coating which is sometimes called ''depainting.''

Temporary total enclosure (TTE) means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Thinner means an organic solvent that is added to a coating after the coating is received from the supplier.

Three-piece aerosol can means a steel aerosol can formed by the three-piece can assembly process manufactured to contain food or nonfood products.

Three-piece can assembly means the process of forming a flat metal sheet into a shaped can body which may include the processes of necking, flanging, beading, and seaming and application of a side seam stripe and/or an inside spray coating.

Three-piece food can means a steel can formed by the three-piece can assembly process manufactured to contain edible products and designed to be hermetically sealed.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through 204F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Two-piece beverage can means a two-piece draw and iron can manufactured

to contain drinkable liquids such as beer, soft drinks, or fruit juices.

Two-piece food can means a steel or aluminum can manufactured by the draw and iron process and designed to contain edible products other than beverages and to be hermetically sealed.

Uncontrolled coating operation means a coating operation from which none of the organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Volume fraction of coating solids means the ratio of the volume of coating solids (also known as volume of nonvolatiles) to the volume of coating; liters of coating solids per liter of coating.

Wastewater means water that is generated in a coating operation and is collected, stored, or treated prior to being discarded or discharged.

Tables to Subpart KKKK of Part 63

TABLE 1 TO SUBPART KKKK OF PART 63.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES

[You must comply with the emission limits that apply to your affected source in the following table as required by § 63.3490(a) through (c)]

If you apply surface coatings to metal cans or metal can parts in this subcategory . . .	Then for all coatings of this type . . .	You must meet the following organic HAP emission limit in kg HAP/liter solids (lbs HAP/gal solids): [a], [b]
1. One and two-piece draw and iron can body coating.	a. Two-piece beverage cans—all coatings	0.04 (0.31).
	b. Two-piece food cans—all coatings	0.06 (0.50).
	c. One-piece aerosol cans—all coatings	0.08 (0.65).
2. Sheetcoating	Sheetcoating	0.02 (0.17).
3. Three-piece can assembly	a. Inside spray	0.12 (1.03).
	b. Aseptic side seam stripes on food cans	1.48 (12.37).
	c. Nonaseptic side seam stripes on food cans	0.72 (5.96).
	d. Side seam stripes on general line nonfood cans.	1.18 (9.84).
	e. Side seam stripes on aerosol cans	1.46 (12.14).
4. End coating	a. Aseptic end seal compounds	0.06 (0.54).
	b. Nonaseptic end seal compounds	0.00 (0.00).
	c. Repair spray coatings	0.64 (5.34).

[a] If you apply surface coatings of more than one type within any one subcategory you may calculate an OSEL according to § 63.3531(i).
[b] Rounding differences in specific emission limits are attributable to unit conversions.

TABLE 2 TO SUBPART KKKK OF PART 63.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

[You must comply with the emission limits that apply to your affected source in the following table as required by § 63.3490(a) through (c)]

If you apply surface coatings to metal cans or metal can parts in this subcategory . . .	Then for all coatings of this type . . .	You must meet the following organic HAP emission limit in kg HAP/liter solids (lbs HAP/gal solids): [a], [b]
1. One and two-piece draw and iron can body coating.	a. Two-piece beverage cans—all coatings	0.07 (0.59).
	b. Two-piece food cans—all coatings	0.06 (0.51).
	c. One-piece aerosol cans—all coatings	0.12 (0.99).
2. Sheetcoating	Sheetcoating	0.03 (0.26).
3. Three-piece can assembly	a. Inside spray	0.29 (2.43).
	b. Aseptic side seam stripes on food cans	1.94 (16.16).
	c. Nonaseptic side seam stripes on food cans	0.79 (6.57).
	d. Side seam stripes on general line nonfood cans.	1.18 (9.84).
	e. Side seam stripes on aerosol cans	1.46 (12.14).
4. End coating	a. Aseptic end seal compounds	0.06 (0.54).
	b. Nonaseptic end seal compounds	0.00 (0.00).
	c. Repair spray coatings	2.06 (17.17).

[a] If you apply surface coatings of more than one type within any one subcategory you may calculate an OSEL according to § 63.3531(i).
[b] Rounding differences in specific emission limits are attributable to unit conversions.

TABLE 3 TO SUBPART KKKK OF PART 63.—EMISSION LIMITS FOR AFFECTED SOURCES USING THE CONTROL EFFICIENCY/OUTLET CONCENTRATION COMPLIANCE OPTION

[You must comply with the emission limits that apply to your affected source in the following table as required by § 63.3490(d)]

If you use the control efficiency/outlet concentration option to comply with the emission limitations for any coating operation(s) . . .	Then you must comply with one of the following by using an emissions control system to . . .
1. in a new or reconstructed affected source	a. reduce emissions of total HAP, measured as THC (as carbon),[a] by 97 percent; or
	b. limit emissions of total HAP, measured as THC (as carbon),[a] to 20 ppmvd at the control device outlet and use a PTE.
2. in an existing affected source	a. reduce emissions of total HAP, measured as THC (as carbon),[a] by 95 percent; or
	b. limit emissions of total HAP, measured as THC (as carbon),[a] to 20 ppmvd at the control device outlet and use a PTE.

[a] You may choose to subtract methane from THC as carbon measurements.

TABLE 4 TO SUBPART KKKK OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION OR THE CONTROL EFFICIENCY/OUTLET CONCENTRATION COMPLIANCE OPTION

[If you are required to comply with operating limits by § 63.3492, 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 each 3-hour block period must not fall below the combustion temperature limit established according to § 63.3546(a) or § 63.3556(a).	i. Collecting the combustion temperature data according to § 63.3547(c) or § 63.3557(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour block average combustion temperature at or above the temperature limit established according to § 63.3546(a) or § 63.3556(a).
2. Catalytic oxidizer	a. The average temperature difference across the catalyst bed in each 3-hour period does not fall below the temperature difference limit established according to § 63.3546(b)(2) or § 63.3556(b)(2); or	i. Collecting the temperature data according to § 63.3547(c) or § 63.3578(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour block average temperature difference at or above the temperature difference limit established according to § 63.3546(b)(2) or § 63.3556(b)(2).
	b. The average temperature measured at the inlet to the catalyst bed in each 3-hour block period must not fall below the limit established according to § 63.3546(b) or § 63.3556(b); and	i. Collecting the temperature data according to § 63.3547(c) or § 63.3557(c); and ii. Reducing the data to 3-hour block averages, and iii. Maintaining the 3-hour block average temperature at the inlet to the catalyst bed at or above the temperature limit established according to § 63.3546(b) or § 63.3556(b).
	c. Develop and implement an inspection and maintenance plan according to § 63.3546(b)(4) or § 63.3556(b)(4).	Maintaining an up-to-date inspection plan, records of annual catalyst activity checks, records of monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by § 63.3546(b)(4) or § 63.3556(b)(4), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
3. Regenerative oxidizers	a. Develop and implement a valve inspection plan according to § 63.3546(c) or § 63.3546(c); and either	Maintaining an up-to-date valve inspection plan. If a problem is discovered during an inspection required by § 63.3556(c), or § 63.3556(c), you must take corrective action as soon as soon as practicable.
	b. If you are using a regenerative thermal oxidizer, follow the operating limits according to 1.a of this table; or	See all applicable items in 1.a of this table.
	c. If you are using a regenerative catalytic oxidizer, follow the operating limits according to item 2.a of this table.	See all applicable items in 2.a, 2.b, and 2.c of this table.
4. Carbon adsorber	a. The total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to § 63.3546(d) or § 63.3556(d).	i. Measuring the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle according to § 63.3547(d) or § 63.3557(d); and ii. Maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.
	b. The temperature of the carbon bed, after completing each regeneration and any cooling cycle, must not exceed the carbon bed temperature limit established according to § 63.3546(d) or § 63.3556(d).	i. Measuring the temperature of the carbon bed, after completing each regeneration and any cooling cycle, according to § 63.3547(d) or § 63.3557(d); and ii. Operating the carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit.
5. Condenser	a. The average condenser outlet (product side) gas temperature in each 3-hour period must not exceed the temperature limit established according to § 63,3546(e) or § 63.3556(e).	i. Collecting the condenser outlet (product side) gas temperature according to § 63.3547(e) or § 63.3557(e); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour block average gas temperature at the outlet at or below the temperature limit.

TABLE 4 TO SUBPART KKKK OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION OR THE CONTROL EFFICIENCY/OUTLET CONCENTRATION COMPLIANCE OPTION—Continued

[If you are required to comply with operating limits by § 63.3492, 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 . . .
6. Concentrators, including zeolite wheels and rotary carbon absorbers.	a. The average inlet temperature measured from the desorption reactivation zone in each 3-hour block period must not fall below the limit established according to § 63.3546(f) or § 63.3556(f).	i. Collecting the temperature data including zeolite inlet temperature according to § 63.3547(f) ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour block average temperature at or above the temperature limit.
	b. The indicator of performance for the desorption reactivation fan operation in each 3-hour block period must not fall outside of the range established according to § 63.3547(f) or § 63.3556(f).	i. Collecting the indicator data according to § 63.3547(f) or § 63.3557(f); and ii. Maintaining the indicator data within the range established.
	c. The nominal rotational speed of the concentrator in each 3-hour block period must not fall below the speed established according to § 63.3546(f) or § 63.3556(f).	i. Collecting the rotational speed according to § 63.3547(f) or § 63.3557(f); ii. Reducing the speed data to 3-hour block averages; and iii. Maintaining the 3-hour block average speed at or above the rotational speed limit.
	d. Develop and implement an inspection and maintenance plan according to § 63.3546(f)(3) or § 63.3556(f)(3).	Maintaining an up-to-date inspection plan, and records of annual adsorbent activity checks. The results shall be compared to historical results and/or results for new adsorbents. If a problem is discovered during the annual inspection required by § 63.3546(f)(3) or § 63.3556(f)(3), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
7. Emission capture system that is a PTE according to § 63.3544(a) or § 63.3554(a).	a. The direction of the air flow at all times must be into the enclosure; and either	i. Collecting the direction of air of air flow, and either the facial velocity of air through all natural draft openings or the pressure drop across the enclosure; 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	*See* items 7.a.i and ii of this table.
	c. The pressure drop across the enclosure must be at least 0.007 inch H_20, as established in Method 204 of appendix M to 40 CFR part 51.	*See* items 7.a.i and ii of this table.
8. Emission capture system that is not a PTE according to § 63.3544(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 each 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.3547(g).	i. Collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.3546(g); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour block 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 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.1(a)(1)–(4)	General Applicability	Yes.	
§ 63.1(a)(5)	[Reserved]	No.	
§ 63.1(a)(6)	Source Category Listing	Yes.	
§ 63.1(a)(7)–(9)	[Reserved]	No.	
§ 63.1(a)(10)–(12)	Timing and Overlap Clarifications	Yes.	
§ 63.1(b)(1)	Initial Applicability Determination	Yes	Applicability to subpart KKKK is also specified in § 63.3481.
§ 63.1(b)(2)	[Reserved]	No.	
§ 63.1(b)(3)	Applicability Determination Recordkeeping.	Yes.	
§ 63.1(c)(1)	Applicability after Standard Established	Yes.	

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart KKKK.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.3561.
§ 63.3(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Fragmentation	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance with Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.3483 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources	Yes	Section 63.3483 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	SSMP	Yes	Only sources using an add-on control device to comply with the standard must complete SSMP.
§ 63.6(f)(1)	Compliance Except during Startup, Shutdown, and Malfunction.	Yes	Applies only to sources using an add-on control device to comply with the standards.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance with Opacity/Visible Emission Standards.	No	Subpart KKKK does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes.	
§ 63.6(i)(15)	[Reserved]	No.	
§ 63.6(i)(16)	Compliance Extensions and Administrator's Authority.	Yes.	
§ 63.6(j)	Presidential Compliance Exemption	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.3543, 63.3544, 63.3545, 63.3554, and 63.3555.
§ 63.7(a)(2)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Sections 63.3540 and 63.3550 specify the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)	Performance Tests Required by the Administrator.	Yes.	
§ 63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in §§ 63.3547 and 63.3557.
§ 63.8(a)(4)	Additional Monitoring Requirements	No	Subpart KKKK does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)–(3)	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in §§ 63.3547 and 63.3557.

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.8(c)(4)	CMS	No	Sections 63.3547 and 63.3557 specify the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart KKKK does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Sections 63.3547 and 63.3557 specify the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§ 63.8(c)(8)	CMS Out-of-Control Periods Reporting	No	Section 63.3511 requires reporting of CMS out of control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No.	
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No.	
§ 63.8(g)(1)–(5)	Data Reduction	No	Sections 63.3542, 63.3547, 63.3552 and 63.3557 specify monitoring data reduction.
§ 63.9(a)	Notification Applicability	Yes.	
§ 63.9(b)(1)–(2)	Initial Notifications	Yes.	
§ 63.9(b)(3)	[Reserved]	No.	
§ 63.9(b)(4)–(5)	Application for Approval of Construction or Reconstruction.	Yes.	
§ 63.9(c)	Request for Extension of Compliance	Yes.	
§ 63.9(d)	Special Compliance Requirement Notification.	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart KKKK does not have opacity or visible emission standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No.	
§ 63.9(h)(1)–(3)	Notification of Compliance Status	Yes	Section 63.3510 specifies the dates for submitting the notification of compliance status.
§ 63.9(h)(4)	[Reserved]	No.	
§ 63.9(h)(5)–(6)	Clarifications	Yes.	
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in §§ 63.3512 and 63.3513.
§ 63.10(b)(2) (i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for Startup, Shutdown, and Malfunction records only apply to add-on control devices used to comply with the standards.
§ 63.10(b)(2) (vi)–(xi)		Yes.	
§ 63.10(b)(2) (xii)	Records	Yes.	
§ 63.10(b)(2) (xiii)		No.	
§ 63.10(b)(2) (xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(2)–(4)	[Reserved]	No.	
§ 63.10(c)(5)–(6)		Yes.	
§ 63.10(c)(7)–(8)		No	The same records are required in § 63.3511(a)(7).
§ 63.10(c)(9)	[Reserved]	No.	
§ 63.10(c)(10)–(15)		Yes.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.3511.
§ 63.10(d)(2)	Report of Performance Test Results	Yes	Additional requirements are specified in § 63.3511(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart KKKK does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources with Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, Malfunction Reports	Yes	Applies only to and add-on control devices at sources using these to comply with the standards.
§ 63.10(e)(1)–(2)	Additional CMS Reports	No.	

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applicable to subpart KKKK	Explanation
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.3511(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart KKKK does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares	No	Subpart KKKK does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality	Yes.	

TABLE 6 TO SUBPART KKKK OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

[You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data]

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene.
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene.
3. Hexane	110–54–3	0.5	n-hexane.
4. n-Hexane	110–54–3	1.0	n-hexane.
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene.
6. Aliphatic 140		0	None.
7. Aromatic 100		0.02	1% Xylene, 1% cumene.
8. Aromatic 150		0.09	Naphthalene.
9. Aromatic naphtha	64742–95–6	0.02	1% Xylene, 1% cumene.
10. Aromatic solvent	64742–94–5	0.1	Naphthalene.
11. Exempt mineral spirits	8032–32–4	0	None.
12. Ligroines (VM & P)	8032–32–4	0	None.
13. Lactol spirits	64742–89–6	0.15	Toluene.
14. Low aromatic white spirit	64742–82–1	0	None.
15. Mineral spirits	64742–88–7	0.01	Xylenes.
16. Hydrotreated naphtha	64742–48–9	0	None.
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene.
18. Stoddard solvent	8052–41–3	0.01	Xylenes.
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes.
20. Varsol® solvent	8052–49–3	0.01	0.5% Xylenes, 0.5% ethylbenzene.
21. VM & P naphtha	64742–89–8	0.06	3% Toluene, 3% xylene.
22. Petroleum distillate mixture	68477–31–6	0.08	4% Naphthalene, 4% biphenyl.

TABLE 7 TO SUBPART KKKK OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS [a]

[You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data]

Solvent type	Average organic HAP mass fraction	Typical organic HAP, percent by mass
Aliphatic [b]	0.03	1% Xylene, 1% toluene, and 1% ehylbenzene.
Aromatic [c]	0.06	4% Xylene, 1% toluene, and 1% ethylbenzene.

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 6 to this subpart and you only know whether the blend is aliphatic or aromatic.

[b] *E.g.*, Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] *E.g.*, Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

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Federal Register

Thursday,
November 13, 2003

Part III

The President

Proclamation 7731—National Adoption Month, 2003

Proclamation 7732—World Freedom Day, 2003

Federal Register
Vol. 68, No. 219
Thursday, November 13, 2003

Presidential Documents

Title 3—

The President

Proclamation 7731 of November 7, 2003

National Adoption Month, 2003

By the President of the United States of America

A Proclamation

Every year, tens of thousands of American families answer the call to adopt a child. During National Adoption Month, we recognize America's adoptive and foster families. We also commit to helping all of our children, including those waiting in foster care, find safe, permanent, and loving homes.

On November 22, communities across the country will come together to celebrate National Adoption Day by finalizing the adoptions of over 3,000 children from foster care. On this day and all this month, we honor families that have opened their hearts and homes to a child.

The number of children who are adopted has increased in recent years. Still, thousands of children in our country—many with special needs—continue to wait in foster care for an adoptive family.

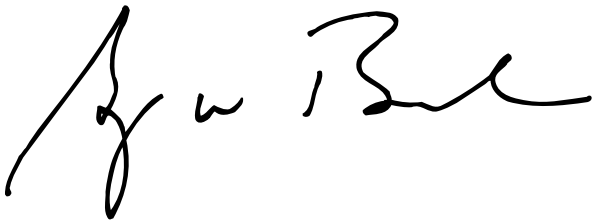
We are taking important steps to make adoption more commonplace and to protect the well-being of our children. We have eased the financial burden of adoption by nearly doubling the maximum adoption tax credit. We expanded the Promoting Safe and Stable Families Program, which encourages adoption at the local level and supports adoptive families with services that ease a child's transition into a new family and help to strengthen the family. The Department of Health and Human Services provides incentives to States that increase the number of children adopted from State-supervised foster care.

Last year, my Administration launched the first Federal adoption website, www.AdoptUSKids.org, which features pictures and profiles of children available for adoption. This site helps loving families connect with waiting children across the country. Already, more than 1,700 children featured on the site have been placed with adoptive families. This progress is testimony to the selfless spirit of American families.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2003 as National Adoption Month. I call on all Americans to observe this month with appropriate programs and activities to honor adoptive families and to participate in efforts to find permanent homes for waiting children.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of November, in the year of our Lord two thousand three, and of the

Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 03–28583
Filed 11–12–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7732 of November 7, 2003

World Freedom Day, 2003

By the President of the United States of America

A Proclamation

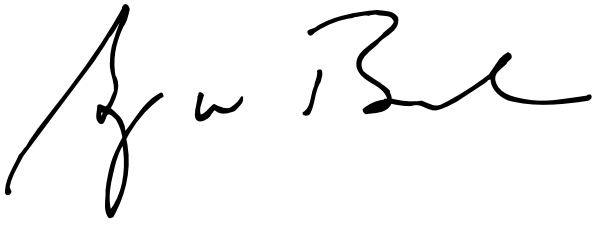
Fourteen years ago, freedom-loving people tore down the Berlin Wall and began to set a nation free from Communist oppression. On World Freedom Day, the United States joins with other countries in commemorating that historic day. The United States is committed to liberty, freedom, and the universal struggle for human rights. We strive to advance peace and democracy and to safeguard these ideals around the world.

After dividing families, friends, and communities for 28 years, the dismantling of the Berlin Wall reunited Germany and helped spread freedom across Central and Eastern Europe. With free elections and the spread of democratic values, these countries won their liberty, and their people became free. These democracies today contribute to a strong Europe, and the United States values their friendship and their partnership.

On World Freedom Day, Americans express gratitude for our freedom and dedicate ourselves to upholding the ideals of democracy. Today, we are working with other nations to bring freedom to people around the world. American and coalition forces are sacrificing to bring peace, security, and liberty to Iraq, Afghanistan, and elsewhere. This is a mission for all who believe in democracy, tolerance, and freedom.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 9, 2003, as World Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities and to affirm their dedication to freedom and democracy for all.

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



[FR Doc. 03–28584

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Federal Register

Thursday,
November 13, 2003

Part IV

The President

Notice of November 12, 2003—Continuation of the National Emergency With Respect to Iran

Federal Register
Vol. 68, No. 219
Thursday, November 13, 2003

Presidential Documents

Title 3—

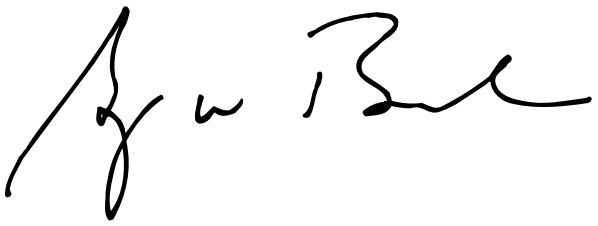
The President

Notice of November 12, 2003

Continuation of the National Emergency With Respect to Iran

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2003. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year this national emergency with respect to Iran.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
November 12, 2003.

[FR Doc. 03–28630
Filed 11–12–03; 12:01 pm]
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Federal Register

Vol. 68, No. 219

Thursday, November 13, 2003

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